TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 359.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM A. CLARK.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

VOL. X OF TESTIMONY (PAGES 4753 TO 5280, INCLUSIVE).

FILED JULY 26, 1906.

(19861.)

No. 1070

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM A. CLARK,
Appellee.

TESTIMONY.

VOL. X

Pages 4753 to 5280, inclusive.

Upon Appeal from the United States Circuit Court for the District of Montana.

The Filmer Brothers Co. Print, 430 Sansome St., S. F.

(Testimony of John B. Catlin.)

Q. Now, without at this time going further into these particular cases, Major, do you wish to make it appear—or wish to be understood as having it appear on this record, as your testimony that in no one of the cases of the entrymen or entrywomen that are named in the bill of complaint, that you knew anything about the financial part of the transaction, or the agreements that had been made, or the arrangements that had been made between them and Mr. Cobban?

A. If I had anything more than I have stated, to do with them, I certainly do not recollect; and as far as any arrangements with them that had been made with Mr. Cobban, I will swear positively that I know nothing whatever about it.

Q. Do you know an entryman by the name of Jack Murtaugh?

By Mr. BICKFORD.—And that is known as "Jack the Ripper." They call him "Jack, the Ripper."

By the WITNESS.—Yes, sir. I have a recollection of that name, "Jack, the Ripper," but I couldn't recollect him, as Jack Murtaugh. I recollect him as "Jack, the Ripper," yes, sir.

Q. You recollect him because counsel has identified him as "Jack, the Ripper." A. Yes, sir.

Q. Did you know of his making an entry, Mr. Catlin? A. I do.

Q. Did you have anything to do with that entry?

A. Possibly made his application.

(Testimony of John B. Catlin.)

Q. Do you know who sent him to you?

A. No, sir, I do not.

Q. You are not prepared to say, then, but what it was one of the entries made from a slip of paper handed you by Murtaugh, from Albert Jemison?

A. No, I am not.

Q. And it might have been Mr. Jemison?

A. Might have been; yes, sir.

Q. And you—do you recall any of the facts and circumstances connected with the proceedings at the land office, at the time he made his final payments—made his payment for the land? A. I do not.

Q. As I understood it, in each and all of these cases, the whole thing has passed out of your mind?

A. Well, no, not entirely. I testified to the facts as I remember them.

Q. Well, have you no recollection of the proceeding in the Murtaugh case?

A. I cannot say that I have.

Q. So that you may have had entire charge of the case and paid the money into the land office for him, and you—obtained his deed in the interest of Mr. Cobban, and have forgotten all about it?

A. No, I think I would have had some recollection about it if I had done the whole business, I would have recollected it, but I cannot recall it to mind now.

Q. Well, I read from Mr. Murtaugh's direct examination, on page 795, of the original record in this case:

(Testimony of John B. Catlin.)

"Q. As to whether or not you filed on the boundaries of the location that Jemison gave you?

"A. Yes, sir, I did.

"Q. Did you see Mr. Catlin in Missoula?

"A. Yes, sir.

"Q. Whereabouts?

"A. Well, I believe I see him first in his office.

"Q. Did you go there to see him?

"A. Yes, sir.

"Q. Who told you to go there to see him?

"A. Mr. Jemison.

"Q. Who went with you to the land office?

"A. Mr. Jemison did; he was one of my witnesses; the other two men's names I don't remember now.

"Q. Did Mr. Catlin go with you?

"A. Yes, sir.

"Q. Did you pay any money there yourself?

"A. No, sir, I did not.

"Q. Did you hear Mr. Catlin say anything there about what he would do, if anything?

"A. Well, I believe I did.

"Q. What did he say?

"A. He said that he would settle up the accounts; he told the clerk.

"Q. How long were you in the land office?

"A. I couldn't say now; the first day I was in I was in there an hour or two. Do you mean when I filed or when I made the final proof?

"Q. Who got your witnesses for you?

(Testimony of John B. Catlin.)

"A. Mr. Jemison.

"Q. As to whether or not he had charge of the whole matter for you? A. Yes, sir.

"Q. After you left the land office where did you go?

"A. Up to Catlin's or Cobban & Dinsmore's office."

Q. Do you remember now, that I have read over Mr. Murtaugh's testimony to you, did it refresh your recollection at all, Mr. Catlin, in regard to this matter?

A. I cannot say that it does.

Q. Are you able to say whether that is true or not?

A. I am not.

Q. You are not able to say whether that is true or not? A. No, sir, I am not.

Q. Further reading from the testimony as follows:

"Q. What did you do there?

"Q. Did you sign any papers? A. Yes, sir.

"Q. What was it? A. The final proof.

"Q. I mean at Cobban & Dinsmore's office?

"A. Yes, sir. Was that when I got the final proof or when I filed?

"Q. I mean after the final proof and so on.

"A. Yes, sir, I signed the final proof or deed.

"Q. The deed. Who did you give the deed to?

"A. I didn't get the deed at all; Mr. Catlin brought it up to the office.

"Q. Brought up what?

"A. Brought the deed up to the office from the land office.

(Testimony of John B. Catlin.)

"Q. And what did you do there in Cobban's office then? A. I signed the deed.

"Q. What did you get?

"A. I got a hundred dollar check on the First National Bank.

"Q. Did you get the check cashed?

"A. Yes, sir.

"Q. And you said you had been paid the ten dollars for expenses before this?

"A. Yes, sir, when I filed."

Q. Well, now, having read that testimony over, does it refresh your recollection at all, Mr. Catlin?

A. No, sir. I am prepared to contradict that.

Q. You are prepared to contradict it?

A. Yes, sir.

Q. What are you prepared to contradict?

A. I am prepared to contradict the statement where he says I brought the deed up from the land office.

Q. Where did you get the deed?

A. I never saw the deed in my life.

Q. You don't know, then, where the deed was procured? A. No, sir, I do not.

Q. And you don't know—is that all that you are prepared to say is not true?

A. I don't think of anything further than that.

Q. Well, did you pay him the hundred dollars?

A. No, sir, I did not.

Q. You don't know anything about that?

(Testimony of John B. Catlin.)

A. I do not; I never wrote a check in my life for Mr. Cobban, paying for any land, never.

Q. Well, didn't you ever have deeds, checks already signed?

A. I did not, not Mr. Cobban's personal check.

Q. Well, would it be Cobban & Dinsmore's check?

A. Well, Cobban & Dinsmore's checks then, yes, sir.

Q. Did you have any of those checks?

A. No, sir.

Q. So, whenever you bought land for Mr. Cobban under these entries, you paid cash, did you?

A. I did, yes, sir.

Q. I understood you to say yesterday, Mr. Catlin, that the payments you made to the Dodds, over in Helena, was part in cash and part in checks.

A. I stated, I believe, or I intended to say, that I went over there with part cash and part checks, but the checks I cashed in the banks in Helena, before settling with them. I paid them cash.

Q. Well, now, were those deeds you had signed over in Wellcome's office, in Helena, were they prepared by by Mr. Wellcome—Lincoln Working, I mean?

A. Yes, sir—no, sir, they were not.

Q. You had them already prepared in Missoula and brought them with you to Helena, did you not?

A. I did.

Q. Who prepared them there?

A. I couldn't say.

Q. So that all you did in Working's office was to

(Testimony of John B. Catlin.)

have the deeds signed and executed which you had previously prepared in Missoula? A. Yes, sir.

Q. And still you are prepared now to swear that the subject of a deed, of their deed to you, when you had the deeds in your pocket, hadn't been considered by you at all?

A. By those people, yes, sir, I am. It never was mentioned.

Q. Well, why was it that you had deeds in your pocket at this time?

A. I had the deeds in my pocket to purchase this land after proving up, provided I could make the deal with them, which I did, as I say, after making final proof and going to the hotel and making a settlement with them, and then I proposed to buy their claims.

Q. And that idea of buying the claims was in your mind when you left with them from Missoula?

A. I fully intended buying them, provided we could have—after final proof was made, at the time I took the deeds, of course.

Q. And the amount that you were to pay them for the deeds had been told you by Mr. Cobban?

A. Mr. Cobban told me, authorized me, to pay a certain amount for these claims, after the proof was made. Of course we couldn't figure what all the expenses would be in advance. I knew after I got there what the expenses would be, and I settled with them.

Q. And a certain amount, that you mentioned yes-

(Testimony of John B. Catlin.)

terday, over and above their expenses, was paid to them by you?

A. I think that is right, yes, sir.

Q. And that was as near as you could tell, a hundred dollars? A. Yes, sir.

Q. And still you think that there was no understanding existing between these people and Mr. Cobban at the time, before you left Missoula, what they were to do? A. I certainly do.

Q. Did you have anything to do with the Yarger claims?

By Mr. WALSH.—You have already asked him that, Mr. Maynard.

By Mr. MAYNARD.—Yes, I have, that is right, Brother Walsh; I am much obliged to you.

Q. Do you know John H. Hardy and Elvira M. Hardy? A. I do, yes, sir.

Q. When did you make their acquaintance?

A. I will say some time in the summer of 1899, when they were in Missoula, visiting their children there.

Q. They live in Massachusetts, do they not?

A. They live down East somewhere, I couldn't say positively as to that.

Q. What relation are they to Mr. Cobban or to Mrs. Cobban?

A. They are father and mother to Mrs. Cobban, I think.

(Testimony of John B. Catlin.)

Q. How long were they in Missoula?

A. I don't recollect when they came there; I think they spent the greater portion of the summer there; the summer of 1899.

Q. Do you know of the fact of their making entries under the Stone and Timber Act? A. I do.

Q. Did you ever see them in Missoula before this summer of 1899? A. I never did, no, sir.

Q. Have they been there since?

A. No, sir, not to my knowledge.

Q. Did you go with them up into the Blackfoot country? A. No, sir, I did not.

Q. You had nothing to do with their claims of any kind? A. No, sir.

Q. Had you taken up your claim previous to your wife and Martha E. Wright's taking up their claims?

A. Yes, sir.

Q. Have you any recollection in regard to the facts and circumstances of your taking up your own claim?

A. Yes, sir.

Q. What did you say? A. Yes, sir.

Q. Who went up with you?

A. Mr. Barrott, I couldn't give his initials.

Q. His name is Leonard Barrott, is it?

A. Leonard Barrott, yes, sir.

Q. Did you know him at the time?

A. I had met him in Missoula; he was an old soldier, and I had met him in that way.

(Testimony of John B. Catlin.)

Q. Do you remember when you and Barrott went up into the Blackfoot country? A. Yes, sir.

Q. Who else went with you, Mr. Catlin?

A. We went up to Mr. Griswold's place on the stage.

Q. What did you say?

A. We went up to Mr. Griswold's place on the stage, on the stage carrying the mail up into that country. I don't think there was anyone besides the driver and Mr. Barrott and myself.

Q. Had you ever been up in the Blackfoot country before?

A. I think not; I think that was my first trip up there.

Q. When was that?

A. I would say that it was some time in the latter part of June, to the best of my recollection.

Q. You went directly from Missoula with your companion, to Mr. Griswold's place at the Clearwater, did you not?

A. Yes, sir, Mr. Griswold owned a place there at the mouth of the Clearwater.

Q. For what purpose did you make this first visit?

A. To inspect that land.

Q. Up in the Blackfoot country?

A. To inspect the timber land there that we proposed to locate—to file on.

Q. How long were you up there?

A. We arrived there in the afternoon of the first

(Testimony of John B. Catlin.)

day from Missoula, I think, and we returned the next day, in the afternoon, to the best of my recollection.

Q. When did you go up to inspect your land?

A. We went up in the morning, started early in the morning, Mr. Griswold, Mr. Barrott and myself, on horseback.

Q. And returned back to Missoula that afternoon?

A. I don't recollect of staying there but one night on that trip. I have been there two or three times, and have stated there from one to two days.

Q. After that?

A. After that, but we only stayed there one night, I think, to the best of my recollection.

Q. Mr. Griswold took you to your claim, and took Mr. Barrott to his claim, did he not? A. Yes, sir.

Q. How far were the two claims from the hotel?

A. I don't know, possibly ten miles; I don't know much about that country there.

Q. Well, now, how far did you go, Mr. Catlin, when you went on horseback with Mr. Griswold and Mr. Barrott?

A. I couldn't say. You know that—where we were on a level with our horses, we could ride on a lope, and when we were on the hills, we would have to walk. I could't say how far it was.

Q. Do you think it was ten miles?

A. I couldn't say about that.

Q. And what did you do?

A. We just barely looked over the land, and Mr.

(Testimony of John B. Catlin.)

Griswold showed us the corners. We could see the trees. He showed us where they were, and we then rode over the land and looked over it.

Q. You didn't ride over the land, did you?

A. Yes, sir, we rode over the land to acquaint ourselves with the fact whether it was mineral land or not, because we had to make a nonmineral affidavit and we wanted to satisfy ourselves that it was worth more as timber land than it was for agricultural purposes.

Q. Did Mr. Griswold point out Mr. Barrott's claim to him? A. Yes, sir; we rode over together.

Q. And then, after this visit and this inspection that you made, you returned back to Missoula and filed on your claim, and attended to Mr. Barrott's filing?

A. I presume so. I suppose I made out his papers when I made out mine.

Q. Well, when did you first learn, Major, that Mr. Griswold had these locations for you?

A. I don't know whether I was informed by Mr. Griswold or Mr. Cobban.

Q. You don't remember that?

A. No, I don't know whether I ever spoke to Mr. Griswold about locating me a claim; I know I did to Mr. Cobban; I told him I would like to make an entry under the Timber and Stone Act.

Q. You don't know whether you spoke to Mr. Griswold or not, but you did speak to Mr. Cobban, and say that you would like to make one of these entries?

A. Yes, I possibly spoke to Mr. Griswold. Mr. Gris-

(Testimony of John B. Catlin.)

wold and I were friendly, but I couldn't swear whether I ever mentioned the matter to him or not.

Q. Well, was it at that time that you spoke to Mr. Griswold or to Mr. Cobban, that you would like to locate a claim for your wife, too? A. No, sir.

Q. Oh, that was later, was it?

A. Yes, sir, that was later; I never spoke to him or anyone in regard to that until they had expressed a desire to make a loan.

Q. Well, you say that you had expressed a desire to get one of those claims, either to Mr. Griswold or to Mr. Cobban. Now, when was it that you found out that a selection had been made for you?

A. Well, I don't know; I would say probably three or four days prior to the time that I went to look at the claim.

Q. Mr. Griswold was one of your witnesses, wasn't he? A. Yes, sir, I think he was.

Q. And this land that you located and filed upon and made final proof upon, and got final receipt for, you conveyed to Mr. Cobban, did you not?

A. I did, yes, sir.

Q. You got the money to pay for the land from Mr. Cobban, did you not? A. I did, yes, sir.

Q. And the advance that you received—and what you made out of the deal, was a hundred dollars, was it not?

A. I received between two and three hundred dollars for my claim, over and above the expenses and

(Testimony of John B. Catlin.)

everything. I conveyed it to Mr. Cobban. I think the money I got for it amounted to about two hundred and eighty dollars. We had an unsettled account running between us. I was employed there, and I think that about two hundred and eighty dollars would cover it.

Q. You think that two hundred and eighty dollars would cover it?

A. Yes, sir, that was the amount I received for my claim, over and above all the expenses.

Q. How long after you made your final proof—the money that you got from Mr. Cobban, and you obtained your final receipt, was it, that you made the conveyance to Mr. Cobban?

A. I couldn't say; it was only a short time afterwards, a few days.

Q. Wasn't it immediately thereafter?

A. I think not.

Q. I mean by that, within a day or two?

A. I say, a day or two; two or three days, to the best of my recollection, possibly longer than that.

Q. Now, did you receive any money at all from Mr. Cobban, in cash? A. Yes, sir, I did.

Q. Over and above the amount that you received from him to pay for the land, and to pay the expenses?

A. I don't understand you. Do you mean for the sale of my land?

Q. Yes, sir. A. Yes, sir, I did.

Q. Well, how much cash did you receive?

A. I received every cent of it in cash. Mr. Cobban

(Testimony of John B. Catlin.)

was owing me at the time, but we didn't pay any attention to that. I borrowed the money from him; and when deeded him the land, I got my money. I got my money then.

Q. He was owing you at the time for services?

A. Yes, sir.

Q. How much was he owing you?

A. I cannot say. He was owing me perhaps a hundred dollars, seventy-five or a hundred dollars, or such a matter; I cannot say exactly.

Q. Well, are you prepared to say that it wasn't a hundred and fifty dollars that he owed you at the time?

A. I don't think he owed me that much.

Q. Why were—why was Mr. Cobban owing you for your wages?

A. Because I hadn't seen fit to draw it, I suppose; I know of no other reason. I could have had the money any day that I wanted it.

Q. Well, when you sold the land you settled up with him and received pay in full from him for your services, did you not? A. No, sir, I did not.

Q. You did not?

A. No, sir, the matter of locating these claims simply and solely to Mr. Cobban, was a separate transaction, a transaction by itself.

Q. Well, when you received the money and paid for for your land, was the unsettled wage question still left open?

(Testimony of John B. Catlin.)

A. Yes, sir, and there is an account open up to the present time.

Q. What do you mean by that, that they are still owing you? A. Yes, sir.

Q. And they continued to owe you and have done for these three years? A. Yes, sir.

Q. How much do they owe you?

A. I don't know. You understand I have drawn on my wages as I needed them, and if I didn't want it, I didn't draw it. It was just as safe there as if it was in my pocket, because then I couldn't spend it.

Q. How much money did you say Cobban paid you?

A. I say, when I deeded that timber land to Mr. Cobban, he paid me in full for the claim.

Q. Well, how much did he pay you?

A. I have already stated, about two hundred and seventy-five or two hundred and eighty dollars.

Q. Two hundred and seventy-five or two hundred and eighty dollars? A. Yes, sir.

Q. Well, how much territory does the word "about," cover?

A. Well, I used that expression as I couldn't say as to fifty cents or one dollar, or anything of that kind; that is as near as I can explain it.

Q. Was it paid you in currency? A. Yes, sir.

Q. What did you say? A. Yes, sir.

Q. Are you willing to swear that he paid you at the time, solely for this land, over and above the amount

(Testimony of John B. Catlin.)

that he had paid, that he had paid for the land office fees and the expenses, two hundred dollars?

A. Yes, sir.

Q. As a profit that you made?

A. Yes, sir, you mean a profit that I made over and above the expense of taking up the land and selling it?

Q. I mean what you made on the claim, clear and clean, over everything that Cobban paid you, was two hundred dollars? A. Yes, sir.

Q. And how much more?

By Mr. WALSH.—He has answered that already; he has told you a half a dozen times that he was paid two hundred and seventy-five or two hundred and eighty dollars, as near as he can recollect.

Q. You said "about," didn't you?

By Mr. WALSH.—You asked him what he was paid, and he told you, two hundred and seventy-five or two hundred and eighty dollars.

Q. Are you willing to swear that he paid you more than two hundred dollars? A. Yes, sir.

Q. Two hundred and twenty-five dollars?

A. Yes, sir.

Q. Two hundred and thirty dollars?

A. Yes, sir.

Q. Two hundred and fifty dollars?

A. Yes, sir.

Q. Two hundred and sixty dollars?

A. Yes, sir.

Q. Two hundred and seventy dollars?

(Testimony of John B. Catlin.)

A. I couldn't say as to that; that is exactly what I hesitated on.

Q. But you are willing to swear that he paid you two hundred and seventy dollars a profit?

A. Yes, sir, I am.

Q. And the wages owing you were not figured in at all? A. No, sir.

Q. Why did you say a few minutes ago, when I asked you how much Cobban paid you for this property that you sold to Cobban, and that at the time he was owing you, why did you bring that in at the time?

By Mr. WALSH.—We object to that as not being the answer of the witness to any question propounded by counsel, as to whether Cobban paid him any money at the time when this land entry was made.

A. As I understand the question, you ask me if Mr. Cobban was owing me anything at the time that I made this entry.

Q. Yes, sir.

A. I said he was, and I state that he is at the present time, and that is the reason that account business came in there, that wage account.

Q. That wasn't considered at all at the time?

A. No, sir; it was not.

Q. Have you any family besides your wife, Major?

A. I have a son living at home.

Q. How old is he?

A. He is about twenty-six years old.

Q. He is self-supporting, isn't he, Major?

(Testimony of John B. Catlin.)

A. Yes, sir.

Q. What did you say?

A. Yes, sir; he makes his home with us when he is in Missoula.

Q. That is, your family?

A. Yes, sir; myself and wife.

Q. Well, now, are you not dependent entirely upon your wages for a living for yourself, and as a means of supporting your family?

By Mr. WALSH.—We object to that for the reason that it is not proper cross-examination, and further it in irrelevant and immaterial.

A. I always worked for a living, and depend upon that for my support.

Q. Well, is it not true that the sole source of your income that you have had since you have been connected with the firm of Cobban & Dinsmore, is the wages that you have received from them? A. It is not.

Q. Well, state the other sources of support?

A. Well, I have a ranch at Stevensville, for which I have been getting a hundred and fifty dollars cash per year. I have a pension of eight dollars per month, and I have a tract of land near Missoula, which I rented last year, and have since sold.

Q. You say that you receive a hundred and fifty dollars a year rent for your ranch at Stevensville?

A. Yes, sir.

Q. That ranch is in your wife's name, is it not?

A. Yes, sir.

(Testimony of John B. Catlin.)

Q. How much are the taxes on it?

A. The taxes are about—

By Mr. WALSH.—We object to the question upon the ground that it is irrelevant and immaterial and not proper cross-examination.

A. Oh, I would say about thirty-five dollars.

Q. That comes out of the hundred and fifty dollars, does it not? A. Yes, sir.

Q. That leaves one hundred and fifteen dollars, does it? A. Yes, sir.

Q. Is that mortgaged?

By Mr. WALSH.—We object to the question upon the ground that it is irrelevant and immaterial and not proper cross-examination.

A. Yes, sir.

Q. How much is it mortgaged for?

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial and not proper cross-examination.

A. Twelve hundred dollars.

Q. You are paying ten per cent interest on that, are you not?

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial and not proper cross-examination.

A. Yes, sir.

Q. That is a hundred and twenty dollars more, isn't it? A. Yes, sir.

(Testimony of John B. Catlin.)

Q. Well, that more than wipes out that source of income, does it not?

By Mr. WALSH.—We object to that upon the ground that is irrelevant and immaterial and not proper cross-examination.

A. I think it does, yes, sir.

Q. Well, now, what—previous to your selling this land near Missoula, what was that?

By Mr. WALSH.—We object to the question upon the ground that it is irrelevant and immaterial and not proper cross-examination.

A. What—do you refer to the income from that?

Q. Yes, sir. A. The rent?

Q. Yes, sir?

A. Twenty-five dollars cash, and I couldn't state what—and my winter's vegetables.

Q. What is that?

A. Twenty-five dollars cash and vegetables for my use during the winter.

Q. And that amounted to twenty-five dollars a year, that is, the rent, and you got your winter's vegetables besides?

By Mr. WALSH.—We object to the question upon the ground that is it irrelevant and immaterial and not proper cross-examination.

Q. How much did you sell this ten acres for?

By Mr. WALSH.—We object to that upon the ground

(Testimony of John B. Catlin.)

that it is irrelevant and immaterial and not proper cross-examination.

A. I sold this ten acres for seventeen hundred dollars.

Q. When did you sell that, Mr. Catlin?

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial and not proper cross-examination.

A. I sold it last fall.

Q. Sold it last fall? A. Yes, sir.

Q. When did you sell it last fall?

By Mr. WALSH.—We object to that upon the ground that is it irrelevant and immaterial and not proper cross-examination.

A. Oh I would say some time in September, or October.

Q. How much was that mortgaged for?

By Mr. WALSH.—We object to that upon the ground that it is not cross-examination, and that it is irrelevant and immaterial.

A. It was not mortgaged for anything.

Q. It was not? A. No, sir.

Q. How much were the taxes on that piece of land?

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial, and not proper cross-examination.

A. Oh, to the best of my recollection, fourteen dollars and some cents.

(Testimony of John B. Catlin.)

Q. And you rented it for twenty-five dollars?

A. Yes, sir.

Q. That is eleven dollars a year. Well, then you have shown that you had a net income of eleven dollars and your winter's vegetables over and above your eight dollars per month pension? Can you name anything else?

By Mr. WALSH.—We object to that also, for the reason that it is not proper cross-examination, and further it is irrelevant and immaterial as to what the income of the witness was, and has no tendency to prove any of the issues in this case.

Q. How much did Cobban & Dinsmore—how much have Cobban & Dinsmore been paying you a month?

By Mr. WALSH.—We object to the question for the reason that it is not proper cross-examination, and further, it is irrelevant and immaterial, what they were paying the witness, and has no tendency to prove any of the issues in this case.

A. A hundred dollars a month.

Q. A hundred dollars a month, did you say?

A. Yes, sir.

Q. That makes twelve hundred and fourteen dollars a year and your winter's vegetables to support your family?

By Mr. WALSH.—We object to the question because it is utterly immaterial and irrelevant to the issues in this case, what the witness was earning, and it is not proper cross-examination.

(Testimony of John B. Catlin.)

A. Yes, sir.

Q. There is—and you were able with that income to live and not draw up your wages?

By Mr. WALSH.—We object to the question because it is irrelevant and immaterial to any issue in this case, and not proper cross-examination.

A. That is not my whole income. I was handling real estate; I very often sell a piece of property, and I get one or two or three hundred dollars commission, sometimes.

Q. That doesn't belong to Cobban & Dinsmore, does it?

A. No, sir; it does not. I reserved that privilege when I went into their employ.

Q. Are you prepared to say as to what that source of income was in 1899 and 1900, positively, from your own knowledge?

By Mr. WALSH.—We object to that for the reason it is irrelevant and immaterial and not proper cross-examination.

A. No, I have not.

Q. You didn't give Mr. Cobban a note, did you, or a mortgage, when you got this money to buy your land?

A. No, sir; I did not.

Q. Did you give him anything?

A. No, sir;I did not.

Q. Did you make any efforts to sell the land to anyone else? A. I did not.

(Testimony of John B. Catlin.)

Q. Sold immediately, or within a day or two after you proved up, to Mr. Cobban, did you?

By Mr. BICKFORD.—We object to this question, and to all of these questions, upon the ground that they have already been gone over two or three times at least, and the answer of the witness has been made, and the counsel has asked him if it isn't true, and the whole matter has been testified to at least two or three times.

Q. Now then, those conditions and circumstances that you have now narrated, you are able to swear, are you, that you had no talk with Mr. Cobban about selling this land to him, until after you had proved up on it?

A. No thought of it, nor any talk.

Q. No talk? A. No, sir.

Q. Well, how about that?

A. Well, I didn't know that—I might have thought a good many things during that time. I might have thought that I would or I would not sell it. I fully intended to sell that land when I took it up.

Q. That was your purpose in taking it up, was it?

A. Yes, sir.

Q. You had no use for it yourself, except for that purpose?

A. No, sir, I had not; I didn't know to whom I would sell it.

Q. You know that Mr. Cobban was buying this class of lands, did you not? A. I did; yes, sir.

Q. When did it first occur to you that you would offer this land to Mr. Cobban?

(Testimony of John B. Catlin.)

A. I cannot say. I cannot answer that, I don't know.

Q. You don't know when you had your first talk with him about it?

A. I know positively I never talked with him about it until after I had my receipt in my pocket.

Q. Well, Mr. Cobban knew that you were taking up this land, did he not? A. He certainly did; yes, sir.

Q. Well, now, wasn't the sole reason that you didn't have a talk with him in regard to the sale of the land prior to your getting this final receipt, was because you knew, and he knew, that it was entirely unnecessary to have such a talk?

A. No, sir; or any other reason. Why, I had nothing to sell until I had acquired the title.

Q. And you knew that it was against the criminal laws of the United States to enter into an agreement relative to its sale, prior to your acquiring final receipt?

A. Yes, sir; I also knew that fact.

Q. You didn't want to violate the law, did you?

A. No, sir; nor did I violate the law.

Q. You were willing to accomplish the same thing by having it understood between you that there would be no agreement, but when you proved up, you did as you both understood you would do, and did do?

By Mr. WALSH.—We object to that upon the ground that it is irrelevant and immaterial, and not proper cross-examination.

A. There was no understanding whatever.

(Testimony of John B. Catlin.)

By Mr. MAYNARD.—When you say it isn't cross-examination, I want to have it appear of record, so that you may thoroughly understand it, that the claim of the Government is that not only in this case that we have had under consideration, here with Mr. Catlin—that Mr. Catlin and Mr. Cobban, Mr. Catlin being the clerk of Mr. Cobban, and his assistant, Mr. Griswold, and Mr. Jemison, and Mr. Kilburn, all knew of this law, and they all knew of the criminal features of the law, and they had all entered into an agreement among themselves that they would try and escape the penalties of the law by having a tacit agreement—by having an understanding among themselves, but not in such an open way that if they were ever questioned and they could say it was a "sop to Cerberus," and quiet their conscience by having no contract or agreement, because it wasn't signed, sealed and delivered and stamped with stamps of the Government, and otherwise executed, in all the due formalities of the law.

By Mr. WALSH.—That is our claim, and we now move to strike out the speech of the counsel.

By Mr. MAYNARD.—And that was the agreement existing, which this witness had with the parties referred to.

By Mr. WALSH.—We now renew the motion to strike out the speech of counsel.

By Mr. MAYNARD.—I wish to have it appear as an answer by counsel, that his understanding of the matter is as stated by him, and that it can be determined whether

(Testimony of John B. Catlin.)

the Courts of the United States would take this view of it or ours.

By Mr. WALSH.—We again move to strike out the statement of counsel.

Q. Excuse me.

A. There was no understanding; none had ever been made. The subject never had been broached, and we never talked about it one way or the other, not one word.

Q. Well, you knew at the time, as you say, that it was against the criminal laws of the United States to have an agreement. A. I did.

Q. And you knew that Mr. Cobban knew that, didn't you? A. I presume he did.

Q. And therefore you knew that it was necessary, if there was any understanding between you, that it was to be that kind of an understanding which you—which you felt that you would be prepared thereafter to say wasn't a legal agreement.

By Mr. WALSH.—We object to the question upon the ground that it is insensible.

A. I positively swear that.

Q. Now, answer the question, as to whether or not there was such an understanding.

A. I positively swear that there was no agreement whatever, in any shape, fashion or form.

Q. Express or implied? A. Express or implied.

Q. Immediately thereafter you obtained the receiver's duplicate final receipt, and without making any effort to

(Testimony of John B. Catlin.)

sell the land to any other person, you immediately sold to Mr. Cobban?

By Mr. WALSH.—We object to the question for the reason it is not proper cross-examination, and the witness has already answered the question three or four times.

A. I explained that, as I have answered this question before, that I transferred this land to Mr. Cobban, probably two or three or four days after making final proof, to the best of my knowledge.

Q. Without making any effort to sell to anybody else?

A. Yes, sir.

Q. Well, now, when you say you entered this land solely for the purpose of selling it again, and making what money you could out of it, why didn't you make more efforts to find some other purchaser and see if you could not get a better price—if you didn't have an understanding with Mr. Cobban that you would sell to him?

A. I cannot say why I didn't, only I considered I was getting all the land was worth.

Q. But as a matter of fact you were only up there a part of one day in your life, previous to this sale, is that not true? A. That is true.

Q. And whatever knowledge you had of the land or the timber growing upon it, was gathered in a few hours that you were up there with Mr. Griswold?

A. Yes, sir; that is correct.

Q. Well, what knowledge could you gain as to the value of the timber growing upon that location?

A. It would be very limited.

(Testimony of John B. Catlin.)

Q. It would be very limited. Well, now then, if as a matter of fact you entered into this as a business proposition for the purpose of getting what you could out of it, why didn't you make further examination of the timber growing upon that location, in order to ascertain its value, so that you might make as much as possible out of it?

A. In the first place, I wasn't competent to make an estimate of the timber myself; I knew nothing about the business, and, in the next place, I didn't think I would be justified in buying any timber that it would require very much investigation, or to hire someone to make it for me.

Q. That is your answer, is it? A. Yes, sir.

Q. And still you had plenty of time, under your contract with Cobban and Dinsmore, to engage in selling land for other people? A. That takes very little time.

Q. That takes very little time?

A. Yes, sir; I am acquainted with the land, too, with which I deal. I can describe the land without going out to show it to a man that I want to sell to, and if he cares to see it, he can go to it with a letter of introduction to the party renting it or selling it, if I can make a sale at all.

Q. In this character of business—this is the character of the business that you did, and the way you conducted the sales, was it?

A. Yes; most of the time, except when the land was far away and not easily accessible.

Q. Isn't it true, Mr. Catlin, that you went out on horseback with Mr. Griswold and Mr. Kilburn, at the

(Testimony of John B. Catlin.)

time and places you have mentioned, and that you didn't go on to the land at all? A. No, sir; it is not.

Q. You never had been up in that country before?

A. No; I never had.

Q. You didn't know anything about the location except as Mr. Griswold had told you?

A. No, sir; not a thing.

Q. So, whether you were on the location or not, you relied solely on what Mr. Griswold told you?

A. I certainly did; yes, sir.

Q. Well, now, as a matter of fact, didn't you say to Mr. Griswold when he was along with you and Mr. Barrott up there to the location, that it was unnecessary to ride up the steep mountain side, and that you had gone far enough, and that inasmuch as he knew all about it, you would take the description from him, and you wouldn't go more than two miles?

A. Didn't I say that to Mr. Griswold?

Q. Yes, sir. A. I did not.

Q. And then you had ridden out about two miles and never went near the land at all. A. It is not true.

Q. All that you claim that you did do when you went up there was to go to the land which he said was the location, and look it over. A. Yes, sir; that is all.

Q. Do you remember of going to a schoolhouse about a mile and a half from Clearwater?

A. I recollect the schoolhouse above Mr. Griswold's place on the Clearwater; I couldn't say how far it was away.

(Testimony of John B. Catlin.)

Q. How far did you go beyond the schoolhouse?

A. To the best of my recollection we turned off somewheres near the schoolhouse.

Q. Turned to the right or to the left?

A. Turned to the right, I think.

Q. Yes; how far did you go then?

A. Well, I don't know; we climbed a hill there and went up into the mountains, but how far I couldn't say. We were up there—I would say, though, that the schoolhouse was farther than a mile, to the best of my recollection, from Clearwater.

Q. A mile and a half?

A. Yes, sir; that is to the best of my recollection.

Q. And then when you left the schoolhouse, which was a mile and a half from Mr. Griswold's house, you don't know how far you did go?

A. No, after we commenced climbing the mountains, I don't know how far we did go.

Q. Did you know anything about the location of your claim?

A. I don't know from memory; I don't recollect. I knew that Mr. Griswold pointed out the corners and the trees and we rode around through the country there, the three of us on horseback.

Q. You only took up one claim, did you?

A. I only took up one claim, but I accompanied the men, Mr. Barrott and Mr. Griswold, we were all there together at that time.

(Testimony of John B. Catlin.)

Q. There was nothing else done except to ride horseback around there, was there? A. No, sir.

Q. Well, now, did you commence the work of getting a claim for your wife before you got the money from Mr. Cobban?

A. I think so, yes, sir; I think that we took them up on to the land and made their locations—I am confident we did, before I proved up on my land.

Q. Well, now, do you remember the facts and circumstances connected with your getting these women to take up claims? A. Yes, sir.

Q. What did you say? A. I do.

Q. Now, you just state it now, please, will you?

A. I think some three or four weeks prior to the time these applications were made, I met Miss Wright—

By Mr. BICKFORD.—I think we will object to this, for the reason that the witness has already stated in full with reference to the entry of Martha E. Wright, and Lizzie T. Catlin, and this is a mere repetition of the testimony heretofore given by the witness, and further, it is irrelevant and immaterial to the issues in this case, and does not prove or tend to prove any fact in issue in the case.

By Mr. MAYNARD.—I challenge the counsel to point to one single word of testimony that this witness has given, in response to any question in regard to the facts and circumstances of these two claims, other than the fact, if he did, that he knew of their taking up their claims.

(Testimony of John B. Catlin.)

By Mr. BICKFORD.—Well, we will call upon the stenographer to refer to the testimony.

By the EXAMINER.—Well, the trouble is that the stenographer who took the testimony that you want to refer to is not the one that is now here in the court-room.

By Mr. MAYNARD.—Not one single word was said by the witness about this matter.

By Mr. BICKFORD.—My recollection is very distinct that all of these facts and circumstances were related by the witness while upon the witness-stand.

By Mr. MAYNARD.—Yes, but the stenographer that took it down isn't Mr. Cooper.

By Mr. BICKFORD.—I understand that, but that testimony has been transcribed.

By Mr. MAYNARD.—But that has nothing to do with the facts and circumstances of their going up into the mountains together and making their selection. I ask if there is a single word of testimony that has been given by this witness in answer to any question put to him by me?

By Mr. WALSH.—To which we answer that he has answered in full in the cross-examination yesterday, the questions propounded by counsel, and the objection is made for the purpose of saving the record and preventing a repetition of what has been testified to heretofore, and further, that the reading of the record by

(Testimony of John B. Catlin.)

the Examiner shows that the objection which has been made is good, and that this witness has fully answered the question propounded by counsel.

By Mr. MAYNARD.—I say that the reading of the testimony by the Examiner shows absolutely that the position which I take is true, namely that not a single word of testimony was given upon that point by this witness.

By the EXAMINER.—I will state that the portion of testimony which I read was from the direct examination of the witness. As I said, I think it would be better to put specific questions to the witness, so as to avoid a repetition.

By Mr. BICKFORD.—Now, we will submit at this time, that the stenographer may read the question which was just propounded to the witness, and the answer given by him, so far as it went, and then submit to the Examiner that he may read the testimony that he has just read, the question and the answer, and if they do not correspond identically, I will withdraw the objection that I have made concerning it.

By the EXAMINER.—As I suggested before, I think it would be much the better way to put specific questions to the witness.

By Mr. MAYNARD.—I will act upon the suggestion of the Examiner.

Q. You went with them, did you, Major?

(Testimony of John B. Catlin.)

A. Yes, sir, I did.

Q. And you took charge of them?

A. I did, yes, sir.

Q. And took them up to Mr. Griswold's house?

A. I did.

Q. And the same course was pursued, so far as you know, with reference to locating this ground, these claims, as in your own case? A. Yes, sir.

Q. You stayed at home—I mean you stayed at the house—at Mr. Griswold's, and for that matter, while they were gone, and he sent Kilburn out with them?

A. Yes, sir, I think so.

Q. Sent Kilburn out to show him the land?

A. Yes, but I didn't stay in; I went every inch of the way myself.

Q. Oh, you did?

A. Yes, sir, I did. Mr. Kilburn joined us, and at Clearwater, the next day, we put in the day going up and examining this land, and we remained there, that is, we were gone on the road there and up there until possibly three or four o'clock, and then we came back and stayed all night there. Mr. Kilburn went on his way that afternoon, after we came back, to Ovando, and the next morning we came back with my party to Missoula.

Q. Was this the second time you had been up there?

A. I think so.

Q. And the first time being the time that you have already named, when you went with Mr. Barrott?

(Testimony of John B. Catlin.)

A. Yes, sir.

Q. You had never been on these claims before, had you? A. No, sir.

Q. And you knew nothing about them except as Mr. Kilburn, Mr. Griswold's man, Kilburn, pointed them out to you? A. No, sir.

Q. That is right, isn't it? A. That is right.

Q. And the ladies had never been up there before, either? A. Certainly not.

Q. Nor since? A. No, sir.

Q. Now, your wife had no independent, separate estate, had she?

By Mr. WALSH.—We object to that for the reason it is irrelevant and immaterial and not proper cross-examination.

A. No, sir.

Q. She did not? A. No, sir.

Q. You mean she had no money?

By Mr. WALSH.—We object to that for the reason it is irrelevant and immaterial and not proper cross-examination.

A. I don't know that, referring to Miss Wright.

Q. Well, did you know of her having any?

A. I know she paid her own expenses from Stevensville down when she came down on the train, and she also paid her expenses back.

Q. Well, she paid her own expenses from Stevensville, a little country town about eighteen miles up from Missoula, isn't it?

(Testimony of John B. Catlin.)

A. It is nearer thirty miles.

Q. You mean you know she paid her own expenses from Stevensville and return?

A. I believe she did, yes, sir.

Q. You didn't pay it, did you? A. No, sir.

Q. Well, you paid all the rest of her expenses, didn't you? A. I did, yes, sir.

Q. How much did they come to?

A. I couldn't say.

Q. I wish you would name it as closely as you can, Major?

A. I paid, I think, fifteen dollars for the rig that we went up in.

Q. Fifteen dollars for the rig? A. Yes, sir.

Q. Yes.

A. I paid—I don't think that I paid our expenses at Mr. Griswold's—I don't recollect it, but I stopped on the road and fed my horses when I went and when I came back, and I paid for all those things.

Q. Did you know of Miss Wright, Martha A. Wright, as she was then known? A. Yes, sir.

Q. Miss Martha E. Wright, did you know of her paying any money from the beginning to the end of this land transaction, until—except the fare from Stevensville to Missoula and return? A. I do not.

Q. You know that you paid all the rest of the expenses, don't you? A. Yes, sir, I do.

Q. And whose money did you pay it with?

(Testimony of John B. Catlin.)

A. It was the money that I borrowed from Mr. Cobban for this very purpose.

Q. That you borrowed from Mr. Cobban?

A. Yes, sir.

Q. Then what do you mean by that?

A. I got a loan from Mr. Cobban before I made this application. I asked Mr. Cobban for a loan of money to perfect title to these two claims. I had promised the women that I would borrow the money for them.

Q. That is, your wife?

A. Yes, sir, and Miss Wright.

Q. Was she any kin to you?

A. None whatever; a warm personal friend of Mrs. Catlin's.

Q. And so you arranged a loan with Mr. Cobban? That is, that you were to get all the money from him that was necessary to secure title to these two descriptions, and pay all the expenses?

A. Yes, sir, that is right.

Q. Did you give him any note or mortgage?

A. I did not.

Q. But he handed over money to you to do this business in buying these two claims?

A. He did, yes, sir.

Q. Well, after you obtained the receiver's final receipt in the two cases, you took the two women to Wallace P. Smith's office, did you not?

A. No, sir, I did not.

Q. Well, didn't they go there to execute the deed?

(Testimony of John B. Catlin.)

A. I think not.

Q. Where did they go?

A. My recollection is that they went to Mr. Stoddard's office.

Q. Oh, very well, I may be mistaken in the name. I renew the question, substituting Mr. Stoddard's name for Mr. Smith.

By Mr. BICKFORD.—We object to this question, because the witness is not directed by the question, concerning any matter about which he has testified.

A. No, sir.

Q. Now, do you understand the question, Major?

A. I think I do.

Q. Well, what is the answer?

A. We went to Mr. Stoddard's office. Whether we went into Mr. Cobban's office prior to going there, I couldn't say; whether the women did or not, I couldn't say. I know I did, and the deed was executed there.

Q. The deed was executed in Stoddard's office?

A. Yes, sir.

Q. The same day that they proved up?

A. Yes, sir.

Q. And you handled all the money in the two cases?

A. I did.

Q. And did all the business? A. Yes, sir.

Q. And got all the money from Mr. Cobban?

A. Yes, sir.

Q. And the women gave no notes and no mortgages and no nothing? A. No, sir.

(Testimony of John B. Catlin.)

Q. And immediately after they proved up they sold the land to Mr. Cobban?

A. Not immediately—they did within—I would say within—the transaction was closed within two hours, anyway.

Q. Well, did they make any profit on their deals?

A. They certainly did.

Q. What did you say? A. They certainly did.

Q. How much did your wife make on the deal?

A. I think she made two hundred and fifty dollars.

Q. Well, how strong do you desire that to be?

A. Well, I am not prepared to say how much she did make on it.

Q. Well, where did she receive her money?

A. She received her money at home; sometime within—I would say within a week.

Q. Who handed it to her?

A. I did; I handed it to her, if I recollect right.

Q. If you recollect right; what do you mean?

A. I think I gave it to her, if I recollect right, at two different times.

Q. And you don't remember what those times were?

A. No, I don't; she might not have received that amount. Now, I am not positive in this matter.

Q. Are you willing to swear, Major Catlin, that your wife received as her profit for her investment—for her taking up this land which she sold to Cobban, more than a hundred dollars?

(Testimony of John B. Catlin.)

A. Yes, I am sure she got one hundred dollars; I am satisfied of that.

Q. What is that?

A. No, I wouldn't swear that she did.

Q. You wouldn't swear that she did?

A. No, I would not; but I think she did.

Q. Well, what makes you think so, Major?

A. Well, it is just an impression that I have got, that she got more than that, but I wouldn't swear positively as to the amount.

Q. Now, do you wish to be understood as swearing here that the money that you paid yourself to your wife, and the only money that she ever received from the beginning to the end of the transaction, that you don't remember the exact amount?

A. I am willing to swear that I paid her her money in two different payments. I think I paid her seventy-five dollars the first time, and I cannot tell what I paid her the next time. I paid her more than a hundred dollars, I am satisfied, but I cannot recall the amount.

Q. But you are not prepared to swear positively, from your knowledge, that you paid her any considerable amount over a hundred dollars?

A. No, I am not.

Q. Why was it that the payments were made of this small sum of a hundred dollars, or thereabouts, in two sums?

A. Because I used part of the money myself, and returned it a few days later to her.

(Testimony of John B. Catlin.)

Q. That is, the money that you had received from Cobban, the hundred dollars that you were to deliver to your wife, you spent it before you had given it to her? A. I spent some of it, yes, sir.

Q. Do you remember how much it was that you spent?

A. I do not; I remember that the money that I got from Mr. Cobban was probably four or five days after the final proof was made.

Q. And after deeds were executed and delivered?

A. Yes, sir—no, not delivered, the deed was in my possession to the time the money was paid.

Q. So you considered—you started out with a hundred dollars to deliver to your wife, and delivered seventy-five dollars over to her, and in the neighborhood of twenty-five dollars a little later on?

By Mr. WALSH.—Wait a moment, Major, there is no question; there is no sort of facts in the testimony of the witness, and nothing to warrant any such statement by counsel. He doesn't ask the witness for any statement of fact at all.

By Mr. MAYNARD.—Every word of it is right there in the testimony, just as the witness has sworn to it.

By the EXAMINER.—What is your answer?

A. I think Mr. Cobban—I cannot tell the amount that he paid me, but I know that I did not, whatever that amount was, I didn't pay it to my wife all at one

(Testimony of John B. Catlin.)

time; probably within forty-eight hours after receiving the money she got the balance of hers.

Q. Yes, and you said the first payment was seventy-five dollars, did you not?

A. Yes, sir, I think so.

Q. And you said that the whole payment was a hundred dollars or thereabouts, so that you had paid seventy-five dollars, and it is a pure matter of arithmetic what the second payment amounted to?

A. Yes, but I paid her more than that.

Q. Yes, but you are not prepared to say how much?

A. No, I am not.

Q. Whose money was it that you paid the expenses out of, including the fifteen dollars that you spoke of?

By Mr. BICKFORD.—The witness has already answered that question.

A. It was Mr. Cobban's money.

Q. It was Mr. Cobban's money?

A. Yes, sir.

Q. Now, when did you settle with Miss Wright, Major?

A. If I recollect right, I settled with her the same evening that she made proof. I am not positive, but I think she took the train and went to Stevensville that same evening; I am not positive as to that, though.

Q. You settled with her, then, the same day that she conveyed to Mr. Cobban?

A. Yes, sir, I think so.

(Testimony of John B. Catlin.)

Q. How much did you pay her for her investment?

A. I think I paid her a hundred dollars.

Q. You know you did, do you not?

A. I wouldn't swear that I did or did not, but I feel confident that I paid her one hundred dollars.

Q. And that is what she made out of the deal, is it?

A. Yes, sir.

Q. Well, now she proved up on one day, and you say within two hours next thereafter she conveyed to Mr. Cobban, and that same day she got a hundred dollars for it?

By Mr. WALSH.—Wait one moment. There is no question asked you, Major.

Q. Now, then, I say, those facts that you have sworn to, when was it that you first spoke to her about the fact that she was to receive that hundred dollars?

A. I spoke to her—I talked with her on the way from the land office, and I asked her, I said, "I have had to borrow the money to prove up on that claim." I asked her if she was willing to sell it or to give us a mortgage on it. She said, "I am willing to sell it, if I can make anything worth while out of it."

Q. And that was on your way from the land office, after you had proved up? A. Yes, sir.

Q. In going where?

A. In going to Mr. Cobban's office.

Q. Why did you go to Mr. Cobban's office?

A. I had no authority to pay any money on this

(Testimony of John B. Catlin.)

land, or to buy it at all. I did not know whether Mr. Cobban would give fifty dollars for it, or two hundred dollars.

Q. And you didn't know whether he would buy it or not?

A. I did not. Mr. Cobban then authorized me to offer her so much for that claim—for those two claims, hers and Mrs. Catlin's.

Q. And you had had this talk with Mr. Cobban and specified the fact that it was your wife and your friend that was going to take up these claims and get all the money from him, still there was nothing said by him to you that would lead you to understand that he would buy the land until after they had proved up upon it?

By Mr. WALSH.—We object to that, for the reason that it is not proper cross-examination, and upon the further ground that it is irrelevant and immaterial to the issues in this case.

Q. Is that the way you wish it to be understood, Mr. Catlin? A. No, sir, it is not.

Q. How do you wish it to be understood?

A. I wish it to be understood as I have testified here, absolutely, that I borrowed the money from Mr. Cobban to perfect the title to the land. I did, and after I had received this money from Mr. Cobban, it was my business to see that he was secured for it after the proof was made, which I did.

Q. Did these women take up the land for the same purpose that you did?

(Testimony of John B. Catlin.)

A. I don't know what their purpose was when they took it up; I know that they got the land the same as I did, and as everybody else did.

Q. Well, you knew that your wife and Miss Wright were going to locate on this land, didn't you?

A. No, sir, I did not.

Q. Didn't know that?

A. I didn't know anything about it.

Q. You didn't know that your wife had any intention of using the land for logging purposes or anything of that kind, or of cutting down the trees, and of converting the trees into logs, and hauling it to the river for the purpose of selling it?

A. I never heard her express her intention at all, and therefore I know nothing about it.

Q. And that is the same kind of a way that you get out of that question, the same as you avoid the question of an agreement or contract, is it not?

By Mr. WALSH.—Wait a moment. Don't answer that question, Mr. Catlin. (To the stenographer.) You may put my direction to the witness down, too.

By the EXAMINER.—What will the witness say, that he declines to answer?

By the WITNESS.—Yes, sir, I decline to answer it.

Q. Under the instructions of your counsel; is it under the instructions of your counsel that you refuse to answer?

By Mr. WALSH (To the Witness).—Don't answer

(Testimony of John B. Catlin.)

that, either. (To the Stenographer.) Put that down, too.

Q. But you are willing to go on record swearing that you don't know that your wife did not expect to locate that timber, or to use it in any way, except to sell it?

By Mr. BICKFORD.—We object to this because the witness has not so answered, and it is just a proposition of counsel, and not an answer of the witness, and it is not proper cross-examination; and is an effort upon the part of counsel to bulldoze the witness, and to compel him to answer a question in a way that is not true.

A. I am willing to go on record and say that I knew nothing about the intentions of my wife, what she intended to do with that claim, as I had never heard her express her intention in the matter, and I think I so stated.

Q. Don't you know that when she entered that land and took that land up, and you went up there with her, that it was the sole purpose of her to sell it as soon as she had final proof on it, if she got enough out of it to make a profit on it?

A. I do not. No, I do not know that when she went up there to take it up, that she had any intention of selling it; I don't know anything about that, and I didn't know that Mr. Cobban would buy it; I knew he had loaned the money, but I didn't know whether he would want it as security or not. I didn't know whether he would purchase the land, and I didn't know that he would take a

(Testimony of John B. Catlin.)

mortgage on it to secure him for the amount of money he had advanced on the land; I didn't know about that.

Q. Well, from your business acquaintance with Mr. Cobban, and your knowledge that you had of him in regard to these dealings, did you think that he would prefer a deed of the land to a mortgage?

By Mr. WALSH.—We object to the question, upon the ground that it is irrelevant and immaterial, and not proper cross-examination of the witness.

A. Well, I thought that he would prefer to purchase.

Q. You thought that he would prefer to purchase the land to taking a mortgage on it? A. Yes, sir.

Q. You don't know of a single instance where he had taken a mortgage, do you?

A. I don't know as to that.

Q. Well, can you answer the question?

A. I cannot.

Q. You cannot answer the question?

A. No, sir; I know that I never talked about the mortgage, and I know that I never took a mortgage, and if Mr. Cobban—if he took a mortgage, in all probability, I would not know anything about it.

Q. And, as a matter of fact, you did not know anything about it? A. No, sir.

Q. And in each and every case so far, you knew nothing about it, about what did take place?

By Mr. WALSH.—We object to the question for the reason that it is irrelevant and immaterial and not

(Testimony of John B. Catlin.)

proper cross-examination, and because the question has already been answered by the witness, and the witness has said what he knew about it.

A. Yes, sir, I think so.

Q. And still you say that, notwithstanding, this ignorance that existed on your part, your wife did convey within two hours after she had proved up upon her claim?

By Mr. WALSH.—We object to the question for the reason that it is irrelevant and immaterial and not proper cross-examination, and because the question has already been answered by the witness, and the witness has said what he knew about it.

Q. —and Miss Wright, both of them.

A. Is there a question?

Q. Yes, sir.

A. Yes, sir, the deed was executed; the deed was executed within two hours from the time the final proof was made, but the deed was in my hands.

Q. What is that?

A. I say that the deed was in my hands.

Q. In your hands?

A. Yes, sir, there was no money paid Mrs. Catlin, she never received any money that day.

Q. Yes, but the deeds were executed and delivered.

A. They were not delivered.

Q. They were delivered to you?

A. Yes, sir.

Q. And as the agent of Mr. Cobban?

(Testimony of John B. Catlin.)

A. They were delivered to me.

Q. And you were the agent of Mr. Cobban?

A. The deed was delivered to me as the husband of Mrs. Catlin, and it was left in my charge.

Q. It was left in your charge? A. Yes, sir.

Q. And you were working for Mr. Cobban at the time, were you not? A. Yes, sir.

(Thereupon a recess was taken until two o'clock P. M. of the same day.)

JOHN B. CATLIN, recalled for further cross-examination.

Cross-examination.

(By Mr. MAYNARD.)

Q. I wish to ask you since the recess, Major, if you have refreshed your recollection as to who this Thomas Pelky is? A. I have not.

Q. You do not know who he is?

A. I cannot place him, no, sir.

Q. Do you know B. Frank Chattin? A. I do.

Q. You know who he is? A. Yes.

Q. Did you go up into the Blackfoot with him?

A. I am inclined to think I did; I won't be positive. I know I went up there with parties; I think I did, I am not sure.

Q. If you did go with Chattin, didn't Thomas Pelky go along with you?

A. Not to my recollection; I am not positive that I went with Chattin. I went up the Blackfoot with par-

(Testimony of John B. Catlin.)

ties, and I think I can recall all of them that I went with, but I don't recall these.

Q. Do you wish to be understood then as saying that you did go with Chattin or you did not?

A. I say I want to be understood that I am not positive whether I did or not; I cannot recall it.

Q. You cannot recall, whether if you did go with Chattin, Pelky was along with you?

A. I cannot recall Pelky at all. I know Chattin and I cannot recall Pelky at all.

Q. Do you know anything about the facts and circumstances of Chattin's entry? A. I do not.

Q. You had no talk with him? A. No, sir.

Q. Didn't go with him to the land office?

A. Possibly so; I won't say that I did not go there with him.

Q. You cannot recall any of the circumstances connected with Mr. Chattin's entry at all?

A. I cannot.

Q. Do not know anything about his money or where he got it?

A. I do not. Perhaps some incidents might recall it to my memory, but I do not recollect it at present, no, sir.

Q. Do you know a woman by the name of Belle Bryan Gilles that was formerly Belle Bryan?

A. I do.

Q. How long have you known her?

(Testimony of John B. Catlin.)

A. I will say I have known her since some time in the summer of 1899. She is a school teacher in Missoula, engaged there at present, I think, and I have met her, I could not say when the first time was.

Q. I think you have in mind another person, Major, Lelia T. Bryan.

A. I beg your pardon. Lelia T. Bryan is the one I have reference to. I know the lady now that you mean; I was mistaken in the name; they have both the same name, Bryan, and Miss Lelia T. Bryan is a school teacher in Missoula.

Q. When did you form the acquaintance of Mrs. Belle Bryan Gilles?

A. The first time that I ever saw her was at the Clearwater, I think.

Q. She was the wife of this man that you have described as the drunken bartender—

The EXAMINER.—Cook, cook, he said.

Q. (Question continued.)—the drunken cook that was working for Mr. Griswold up in the Clearwater, Major.

Mr. WALSH.—That you have described as a drunken cook.

A. I don't think I used that term; I said this man was drunk, which he was.

Q. That he was a cook and this woman was his wife?

A. Yes. She came to me very much exercised, and

(Testimony of John B. Catlin.)

thought he was going to die, but I told her I thought he would live through it.

Q. Is that the first time you ever saw her?

A. I think not, no; I think I met her once before.

Q. Where? A. At the Clearwater.

Q. Did you assist her in getting her land?

A. I might have assisted her after she came to Missoula or—no, I think she got her land in the Helena land office—I think I did assist her, though.

Q. She made her filings in the Helena District, Major? A. Yes, sir.

Q. Did you go over there with her?

A. I think so, yes, sir.

Q. Who came with you?

A. I do not just recollect; there were two or three and possibly four.

Q. Who were they?

A. I cannot recall all the names.

Q. Let me refresh your recollection. Wasn't this school teacher Lelia T. Bryan, along?

A. I think she was.

Q. And wasn't her father Thomas B. Bryan?

A. Yes, I think he was.

Q. And wasn't there a man by the name of Edgar Lehman?

A. I could not say; I don't recall him.

Q. But you do recall the fact that these two daughters of Bryan—

The EXAMINER.—No, one daughter and one sister.

(Testimony of John B. Catlin.)

Q. I mean the daughter of Bryan and his sister and Thomas Bryan himself were in the party?

A. I recall the fact that I went to Helena with those people named, but whether they were all in one party at the same time, I cannot say.

Q. Mr. Griswold was along, too, was he not?

A. Mr. Griswold was in Helena at the time, yes, sir.

Q. You knew Thomas B. Bryan's wife, Harriet, did you not?

A. The name is familiar; I don't recall her at present.

Q. You don't remember of her making her filing and final proof in the Missoula land office?

A. I do not; I don't know whether she made her proof in Missoula or the Helena land office.

Q. Now, then, Major, tell me in your own way just what you did in connection with these three entries of Thomas Bryan and Belle and Lelia T.?

A. I went to the Helena land office with them and they made their proofs there and I went back to my hotel and got the money and paid for those proofs, the money that they had borrowed from Mr. Cobban for this very purpose.

Q. Whom did you get the money from?

A. I got it from Mr. Cobban.

Q. When?

A. Before I left Missoula.

Q. How much was it?

(Testimony of John B. Catlin.)

A. I don't recollect; it was money enough to pay for the claims and to pay the expenses.

Q. Enough to pay for the claims and to pay all the expenses? A. Yes, sir.

Q. Wasn't Edgar Lehman, this man that lived up at Bonner, that worked up at Bonner—wasn't he in the party?

A. Possibly so; I don't deny that he was, but I don't recall him.

Q. Don't you know him at all? A. I do not.

Q. Edgar Lehman? A. I do not.

Q. In what form did Mr. Cobban give you this money; was it in currency or a check?

A. I think it was both; I think it was some currency and some checks.

Q. But how much you do not know?

A. No. It was money enough as I have stated to pay for the land and to pay the expenses, and I cannot state positively whether there were three of those people made proof or four, so how can I state the definite amount of money.

Q. If it was four it would be upwards of $2,000?

A. Not necessarily.

Mr. BICKFORD.—There is no question asked.

Q. Well, it would be $1,600 for the land, wouldn't it?

A. Yes, providing they were 160 acres each.

Q. And then there would be the expenses of publication and the expenses of the land office and the ex-

(Testimony of John B. Catlin.)

pense of transportation from Missoula to Helena and back and their hotel expenses and so on? A. Yes.

Q. Well, that would cut into $2,000 pretty well, wouldn't it?

A. Oh, yes. The publication expense was not necessarily paid then, because that could be sent to the paper afterwards. I don't recollect which way, whether it was paid there. In some instances it was paid direct into the land office at the request of the publishers to have the money paid there, and he would send the affidavit of publication direct.

Q. Who did you pay this money to to pay for these four entries—three anyway, and possibly four?

A. I really don't recollect whether I paid it to the parties themselves or whether I paid it to the receiver of the land office. I paid it in surely.

Q. You paid it into the land office?

A. Yes, sir.

Q. And got the money from Mr. Cobban just before you left for Helena? A. I did, sir.

Q. Have you any recollection as to the amount of the expenses you paid in transportation of these people to Helena and back?

A. Oh, I have some idea of it; I could not say exactly.

Q. Well, how much have you an idea that it was?

A. The round trip ticket from Missoula to Helena would be about eight dollars at that time.

Q. Where did you put them up, at what hotel?

(Testimony of John B. Catlin.)

A. They went to the Cosmopolitan Hotel, a dollar a day house or one dollar and a quarter, I don't know which.

Q. And you paid their bills at the hotel, did you not?

A. No, sir, they paid their own hotel bills.

Q. Are you sure of that? A. I am.

Q. Did you give them the money? A. I did.

Q. How much did you give them for that purpose?

A. I gave them whatever the amount was of the bill.

Q. Are you waiting to calculate?

A. There is no question.

Mr. BICKFORD.—There is no question.

The WITNESS.—I was waiting for you.

Q. You say you don't know how much money you gave them for their hotel expenses?

A. No, I do not.

Q. Were there any other expenses besides their transportation and their hotel expenses that you paid?

A. I do not think of anything but the car fare.

Q. Street-car fare? A. Street-car fare.

Q. Who obtained the receiver's duplicate final receipt in these cases; were they delivered over to you?

A. I could not say whether they were or not; I think I did have them in my possession when we went back to Missoula from Helena.

Q. Didn't you go back with them?

A. I think so; I think we all went back on the same train and went up on the same train.

(Testimony of John B. Catlin.)

Q. And they conveyed the land to Cobban as soon as they got back to Missoula, did they not?

A. I know nothing about it, sir. I know I turned in my expense account to Mr. Cobban and there is right where my part of it ceased; I know nothing further.

Q. That is, you turned in an expense account including the amount that you had paid for the land and all the expenses that you had been put to?

A. Yes, sir.

Q. And what Mr. Cobban did thereafter you had no knowledge?

A. I know that Mr. Cobban afterwards purchased the land, but when I don't know nor anything about it, nor what he paid for it nor how soon after or what he paid them for it, I have no knowledge.

Q. How do you know that he purchased their land?

A. I have heard it talked since this thing came up.

Q. Mr. Griswold was there at the time when these final proofs were made, and was a witness, was he not?

A. I think so; that is my recollection.

Q. I would like to have you refresh your recollection, Major, in regard to this Edgar Lehman, and to enable you to do so, did you not hear about some trouble being had with Mr .Lehman, about his refusing to convey to Mr. Cobban? A. None, whatever, no, sir.

Q. In other words, that he was about the only instance, I guess, as far as I know where the entryman tried to hold up Mr. Cobban?

A. I never had any knowledge of that.

(Testimony of John B. Catlin.)

Q. And that it required a visit from Mr. Griswold and Thomas Bryan both had to go out there and finally they induced him to come into Missoula and convey the land as he had agreed; did you hear anything about that? A. No, sir.

Q. And you don't know whether such a man was along or not?

A. I do not; I state positively that I cannot recall that man if I knew him or had any idea whatever I would be perfectly willing to state.

Mr. WALSH.—You are not singular in that; there is nobody who knows anything about him except my friend here.

The EXAMINER.—If you have any objections to make, make them in the record in the proper way.

Q. Did you know a family that were living up in the Clearwater country by the name of Watson?

A. Yes, sir, I know of the Watsons.

Q. Do you know Harriet Watson?

A. I know of her; I don't think I would know her if I should meet her to-day; I have no idea I would.

Q. Did you hear of a man by the name of Marion B. Watson? A. Marion B. Watson, yes, sir.

Q. And Katie Watson?

A. Yes, sir; those names are all familiar.

Q. Doc E. Watson?

A. Yes, sir, the names are all familiar; I recall them very well.

(Testimony of John B. Catlin.)

Q. Did you have anything to do with their entries or drawing their statements?

A. I cannot recollect that I did; I might have. I really don't know now whether they made their proof in Helena or Missoula.

Q. These were made in Helena. You have no recollection of going there with them?

A. I cannot say that I did not go with them, but I don't recollect. I have no object in keeping back this testimony; any thing I know I am perfectly willing to state, perfectly so, sir, but in cases where my memory fails me I cannot answer. I will do my best.

Q. Have you any recollection about Charles H. Moss?

A. Yes, sir; I know the man well; he lived in Missoula.

Q. He is a crippled peddler, is he not?

A. Yes, sir.

Q. Do you know anything about his entry at all?

A. I know he made an entry.

Q. Did you assist him? A. I think I did.

Q. You drew his statement, did you not?

A. I presume I did.

Q. At the time of his filing?

A. I presume I did; I don't know positively. I drew a great many of them.

Q. Please tell me all you know about him. I know you are perfectly willing to tell, and I would like to have you tell me so as to get over the ground as rapidly as possible. Tell me what you know about Mr. Moss' entry?

(Testimony of John B. Catlin.)

A. I don't recollect enough about it to go into details to tell you; perhaps you can get more information by asking direct questions, because it may refresh my mind so that I would be better able to answer.

Q. Let me ask you in regard to the Dodds, Edward Dodd and Cora Dodd and Hiram Dodd and Harrison Dodd and Matilda Dodd and Lizzie Dodd. Do you know that family of Dodds? A. Yes, sir.

Q. Did you have anything to do with their entries?

A. I did.

Q. Tell me what you did with them, please?

A. I went to Helena with them to make their proof.

Q. State as to whether or not the same course was adopted by you in connection with these Dodds that was pursued with the Bryans?

A. Well, I cannot recollect particularly about the Bryans, but I do recollect about the Dodds.

Q. You recollect very particularly about the Bryans?

A. I recollect about them making their proofs, yes, but I don't recollect about that whole party that claim was with them; I don't recollect anything of the kind.

Q. That was the only thing you did not remember. Now, you remember that the Dodds—how many of them?

A. Oh, four or five, four, anyway.

Q. Was Hiram Dodd one? A. Yes, I think so.

Q. And Harrison? A. Harrison Dodd, yes.

Q. And Matilda Dodd? A. Yes.

(Testimony of John B. Catlin.)

Q. And Lizzie?

A. Lizzie—I don't recollect whether there was a Lizzie Dodd in the outfit or not; there might have been.

Q. There is Harrison and Hiram and Matilda and Lizzie. Now, I wish you would tell me about the facts and circumstances connected with your making their entries, Major?

A. Well, sir, I accompanied them to the Helena land office to make their proofs. I paid for those proofs after they were made. I think I paid the money myself, but I won't be positive whether I paid it to them or direct to the register or receiver; I think I paid that money myself. Their receipts were issued, and they went to their hotel, the Cosmopolitan Hotel. I went down to the hotel and settled up with them and gave them the amount that they each of them had by way of loans to prove up on this land, and before leaving Helena I purchased the land of them and took them to Mr. Lincoln Working's office and had the deeds made there. I remember that after I had talked with them I had no idea where to go, and I went out and saw this Mr. Working, as I recall the name—I saw his sign across the street and I went over and saw him and then went back and took the parties in there and made the deeds.

Q. And they all deeded to Mr. Cobban on the same day that the money was paid into the land office and the final receipts were issued? A. They did.

Q. When did you first become acquainted with these Dodds?

(Testimony of John B. Catlin.)

A. I could not say; I hardly know them now. I would think that the limit of my acquaintance was just during the time that they were securing title to their land. I don't know whether I met them or not when they made their application; I know that I did meet them when they made their final entry or purchase.

Q. As a matter of fact you did not know anything about them previous to their taking up this land, did you?

A. I did not, no, sir; I don't think I ever heard of them; I don't know, but I would say that I knew nothing about them.

Q. Do you know who it was that made you acquainted with them?

A. No I don't recollect that; I don't know who it was nor where it was.

Q. Did you ever get well enough acquainted with them to know the relationship that existed between them at all?

A. I don't know; I supposed that one of the Dodds and one of the Dodd women were man and wife, but then I don't know that I could tell as to the others.

Q. Do you know whether you drew their papers at the time they filed?

A. I don't recollect; I possibly did.

Q. Can you recall any of the facts or circumstances connected with their entries previous to the time that you started from Missoula to Helena with them?

A. I can not.

Q. Can you recall the fact as to whether you had seen

(Testimony of John B. Catlin.)

any of them at any time previous to your starting for Helena? A. No, sir; I cannot.

Q. And as far as you now know they may have been absolute strangers to you at the time that you got on the cars to leave for Helena to prove up?

A. Oh, no; nothing of the kind.

Q. What is the fact?

A. There is no question but what I was introduced to those people before I started out with them, to my mind.

Q. I mean besides the fact, of course, that you were acquainted with them enough to know they were Dodds?

A. That is it; yes, sir.

Q. Well, I mean with that exception.

A. Well, with that exception possibly that is true; yes, sir.

Q. Now, all of their expenses in going to Helena and returning, including their railroad fares, their hotel bills and their street-car fare you paid, did you not?

A. I bought them a round trip ticket each; that is my recollection of it; and I think I paid their entire expenses, yes, sir.

Q. And the money that was paid for the land was paid into the land office by yourself? A. Yes, sir.

Q. And you obtained the money from Mr. Cobban?

A. Yes, sir.

Q. And the final receipts were handed over to you?

A. I think that the final receipts were as I stated in my possession when we came back, but they were no doubt given to the parties to whom they were issued when they were issued by the officers of the Helena land office.

(Testimony of John B. Catlin.)

Q. And when you came back to Missoula they were in your possession? A. Yes, sir.

Q. After you had paid all of their expenses as you have testified, and paid Mr. Cobban's money in for them to buy their land, they then on that same day were taken by you over to Lincoln Working's office in the city of Helena, and they each of them conveyed this same land to Mr. Cobban?

Mr. WALSH.—We move to strike out the declaration of counsel to the effect that the witness paid into the land office Mr. Cobban's money, and we object to the whole question as merely a repetition of what the witness has testified to as his testimony is construed by counsel.

Mr. BICKFORD.—And not as it was actually given.

A. This money was a loan from Mr. Cobban to these parties and it was not Mr. Cobban's money in any sense of the word.

Q. But they straightaway went with you as you have testified from the land office to Mr. Lincoln Working's office, and there they conveyed this land to Mr. Cobban?

A. No, sir.

Mr. WALSH.—He has not testified to that either.

The WITNESS.—I did not testify to anything of that kind.

Q. Did you not say that they went with you to Lincoln Working's office?

A. I did; but I did not say that they immediately went there; I said that I went to the Cosmopolitan Hotel with

(Testimony of John B. Catlin.)

them and there I made the arrangement and purchased the land in the hotel; I spent two hours with them there.

Q. You went from the land office to the hotel?

A. Yes.

Q. And then from the hotel you went to Working's office where the deeds were drawn up?

A. After I had come to an understanding with them I went out to see where I could find a notary public to draw up these papers. Mr. Working was the man that I ran across first, an entire stranger, and I took them over there at that time and had the deeds made there. That is correct.

Q. And you received the deeds from them?

A. I did.

Q. And you paid them, each of them, $100 for it, did you not?

A. I cannot say as to that whether, you know, they had had any part of this money as a loan from Mr. Cobban before we started out or not. If they had, I had something to show for it, a memorandum of it. I know that after the proofs were made I went into the hotel with them, or after they had gone there I went down, and there I made out the account of it to each one, the amount that he had received, and if he had received anything prior to that time from Mr. Cobban I don't recollect that, but if they had, I also have that charged up to them in my account.

Q. What were the items that were embraced in your charge?

(Testimony of John B. Catlin.)

A. I have already stated that there was a round trip ticket to Helena and car fare and I think hotel bill.

Q. How about the land office fees?

A. It was all included.

Q. And the publication of notices? A. Yes, sir.

Q. And the $2.50 per acre? A. Yes, sir.

Q. How much did that amount to in each case as near as you can recollect?

A. Oh, I would say six or seven hundred dollars.

Q. In each case?

A. Nearly that; yes, sir.

Q. Let me see. There would be $400 for the land and $11 for the register's fee and $10 we will say for the publication and $8.00 round trip ticket and hotel bills as much more $8.00, that makes $437, does it not?

A. I have not figured it.

Q. Well $400 for the payment for the land and $11 for the register's fee and $10 for the publication fee and $8.00 for the round trip ticket from Missoula to Helena and $8.00 for hotel bills—well, that would probably be $4.00, that would be $433 that it would average for each one. Is that so? A. It figures so, it seems.

Q. Now, then, that was presented to them, you say, at the time that you talked with them in regard to selling the land? A. Yes, sir.

Q. Now, then, how much did you allow them over and above this $433?

Mr. BICKFORD.—I object to that for the reason that the witness has not testified that he has allowed them any-

(Testimony of John B. Catlin.)

thing, and has testified to nothing concerning the allowance of anything to the entrymen, but has testified on the contrary that he made a bargain with them and bought from these people the land concerning which he has been testifying.

Mr. MAYNARD.—I withdraw the question.

Q. How much did you pay them for their land over and above this amount that we have now computed together?

A. I cannot say; I don't know whether amounts that you have computed there included everything that they had had or not.

Q. Did you know of their having had anything else?

A. I don't think of anything at the present time.

Q. Now, if you don't know or can't remember of their having received any amounts from Mr. Cobban other than what you have mentioned which you paid over to them as his agent, how much did you pay them for their land over and above this amount?

A. I don't recollect; I don't know; the deeds will show what I paid them. I don't recollect exactly what the amount was.

Q. Major, are you prepared to swear that the amounts stated in the deeds in the case of these Dodds was the true consideration?

A. Yes, sir, as far as any money transactions with me, I am.

Q. What do you mean by that?

A. I mean that I took a deed to the land, and the con-

(Testimony of John B. Catlin.)

sideration was named in that deed exactly as I bought it. there was no false consideration stated in that deed.

Q. Have you any recollection at all, now, of the amount of money that you paid each of the Dodds for their deeds?

A. I have stated that I do not.

Q. You have not? A. No, sir.

Q. Will you swear that you paid any of these Dodds more than $100 at that time in consideration of their turning over these deeds to you? A. No, I won't.

Q. Is it not true, to the best of your recollection, that the amount that you did pay each of them was $100?

A. Something near $100, I think, yes, sir, but as to the exact amount I am not prepared to say what it was.

Q. When you say something near $100, you mean that that must be a little over or a little less?

A. It might be over.

Q. And might be less?

A. I don't think so, no, sir.

Q. Would you say that any of them got over $100?

A. I would not say so; no, sir.

Q. Now, you have no knowledge of any of these four Dodds who conveyed to you at that time and place as the agent of Mr. Cobban ever at any time or at any place receiving any sum other than $100 for their land, have you?

Mr. BICKFORD.—We object to that for the reason that the witness has not yet at any time stated that they received $100, but, on the contrary, has stated that he does not know what he did pay them at that time as the consid-

(Testimony of John B. Catlin.)

eration for the land, saying, in answer to one question, that he paid six or seven hundred dollars.

Mr. MAYNARD.—You cannot mislead this witness.

Mr. BICKFORD.—You are trying hard enough to do it.

Mr. MAYNARD.—You are.

Mr. BICKFORD.—I say you are.

The EXAMINER.—Well, read the question and let him answer.

A. No, sir.

Q. But you do know of their receiving that amount?

A. Yes, I know of their receiving that amount, because I paid it to them myself or paid them an amount something near that amount.

Q. And you have no reason to believe, have you, that any of these four Dodds before that day or since received any other sum for their land than this $100 or practically that amount?

Mr. WALSH.—We object to that as not proper cross-examination and it is entirely irrelevant whether he believes or does not believe that they did.

A. I would have no means of knowing after my part of the transaction. If Mr. Cobban had paid them $1,000 apiece after I got back to Missoula, I would not know anything about it.

Q. But after you had the deeds in your pocket, you could not believe that they would receive any more money?

(Testimony of John B. Catlin.)

Mr. WALSH.—We object to that for the same reason.

A. No.

Q. Did you not understand at the time that it was a completed transaction when you paid the money over to them and you received the deed?

Mr. BICKFORD.—We object to this as not calling for a fact but for a conclusion of the witness.

A. I certainly did.

Q. You know of no note or mortgage having been given by any of them, do you?

A. None whatever.

Q. Were any receipts under the circumstances of this case required by you?

A. I think not, no, sir; I don't recollect of any.

Q. How did it happen, Major, that under the circumstances that you have now testified to, you obtained their deeds on that day?

A. Why, I went to them and offered to purchase when I went to the hotel, and there is where I made a bargain with them right there, and paid them, and they deeded to me.

Q. Did you do that of your own motion?

A. I did.

Q. Or under instructions from Mr. Cobban?

A. I did that partially on my own motion. Mr. Cobban, I think, authorized me to pay so much for those claims after proof was made.

Q. That is, he authorized you to pay the amount that you did in fact pay?

(Testimony of John B. Catlin.)

A. Yes, and had I not secured the claims, instead of making deeds, I would have had mortgages made to secure the loan.

Q. Had they agreed with you when they started with you from Missoula and you were paying their expenses up there as you have testified, that they would sell the land to you or mortgage it?

A. Most certainly not.

Q. Nothing had been said by you to them or by them to you in regard to the matter? A. No.

Q. No arrangement had been made of any kind by which they were either to convey to you for $100 which you would pay them, and which you say Mr. Cobban authorized you to pay, or that they would mortgage the land?

A. Nothing whatever; after their proofs were made I felt at liberty to purchase them just as well as if they had had them for ten years.

Q. Now, Major, if nothing had been said by you nor nothing had been said by them to you about their selling the land or their buying it, or their agreeing to mortgage it, the subject matter about their sale or security had not been broached by either of you until—

A. I made no arrangements whatever to loan this money; that was Mr. Cobban's arrangement. I did not make a loan to them of this money before we started from Missoula. I came away with them to make their proof and paid this money to them that Mr. Cobban had loaned them, as I stated.

(Testimony of John B. Catlin.)

Q. Do you know of any arrangement that had been made between them and Mr. Cobban prior to their leaving Missoula? A. No, sir, I do not.

Q. Was anything said about that to you, about such an arrangement?

A. There was not half a dozen words passed between us. I met them and went to the train with them and bought their tickets, and I did not see them on the train, I don't think, from the time we started until we landed in Helena.

Q. If arrangements had been made between Mr. Cobban and them or any of them, you knew nothing about it? A. No, sir.

Q. Did any of them at any time say anything to you either on the train or at the land office or at the hotel or at the time that you were in the law office, that they had had any conversation with Mr. Cobban?

A. I do not recollect that they did.

Q. You have no recollection of any of them having said anything about it?

A. I have a very vivid recollection of the conversation that I had with them when I purchased the claim.

Q. What was it?

A. I gave them a statement of their accounts, and I proposed to give them so much, and they would make the deed right there, or I proposed to have them go to a notary public with me and secure the amount of the loan they had received by a mortgage.

Q. Was there anything said at all by any of you at

(Testimony of John B. Catlin.)

that time about any arrangement or agreement that had been made with Mr. Cobban relative to the loan or sale?

A. Why, what I understood—I don't recollect anything that was said by them, but they had made arrangements with Mr. Cobban to borrow this money.

Q. How did you know that?

A. I know that Mr. Cobban told me that he had made a loan to these people and wanted me to go over there with them to make their proof, which I did.

Q. That is the way? A. Yes, sir.

Q. And the loan was made by giving the money to them?

A. The arrangements were made for the loan for that purpose, of course.

Q. But you had the money? A. I did.

Q. And you had the money and paid all their expenses and they got nothing until after the deeds were in your possession, when they got $100 from you?

Mr. WALSH.—We object to this as merely argumentative and asking for no facts from the witness. The witness has already stated what he gave them.

Q. You have a clear recollection of what took place at the hotel? I want you to tell me all about that?

A. I have already told you.

Q. You sat down there and figured this thing up as to the amount that you had expended for them?

A. Yes, sir.

(Testimony of John B. Catlin.)

Q. And you were to give them $100, and they went to the lawyer's office and the deed was drawn up and the transaction completed?

Mr. WALSH.—How strange that you omitted his recital that he said they could give him a mortgage or sell the claim to him. Why do you omit that?

Mr. MAYNARD.—He said that a dozen times.

A. There was no compulsion about this; I did not care whether I got their land or whether I got a mortgage on it. It was left entirely with them. I had fulfilled my mission when I procured either. I intended to have my security for the money that I had loaned them for Mr. Cobban by having a mortgage.

Q. What power did you have over these strangers that you barely knew?

A. I had none whatever; I had no power over them.

Q. You said that you proposed to get one or the other? A. Yes, I did.

Q. Supposing that perhaps, after you had paid this money in as you have testified, they said we won't do anything, what could you have done?

A. I think the matter could have been adjusted very nicely.

Q. How? A. Why, by suing and attaching.

Q. Did you know of their having any property of any kind, any estate of their own?

A. I do not at the present date and I did not then.

(Testimony of John B. Catlin.)

Q. To the best of your knowledge and belief they did not have any, is that not so?

A. I think they had a fish-pond up there in the hills somewhere; I don't know anything about the value of it.

Mr. WALSH.—Well, they had these lands when they bought them.

Q. Don't you know that they could have sold the lands as well to somebody else as to you?

A. Why, surely, yes.

Q. And if they had sold them before you got your attachment out, what security would you then have had?

A. I would have had none whatever, of course.

Q. If they had no personal liability, and their land would have been sold, you would have been out your money?

Mr. BICKFORD.—We object to this as purely hypothetical and argumentative, and calling for no facts from the witness whatever, and as not proper cross-examination.

Q. Isn't that so, Major?

A. I am not a lawyer, sir.

Q. You are enough of a lawyer and enough of a business man to know that, are you not?

A. State the question please.

Q. (Question read.)

A. I see no other way out of it now; I don't know.

(Testimony of John B. Catlin.)

Q. And you knew it at that time as well as now?

A. Most assuredly I did; if I know it now I knew it then.

Q. Now, then, do I understand that with that knowledge you are willing now to testify that you loaned them a large sum of money which you paid into the land office without any security whatever and without any agreement or understanding between you and them as to what they would do immediately after they had got the receipt?

A. Yes, sir, you so understand it, and that is true. That money was paid there; there was no security; there was no promise of security; they never made any promise to me. The money was paid by Mr. Cobban to me to go over and pay for those proofs, and I went in and paid it. I would not have been to blame if he had lost it; I had carried out my part of the transaction.

Q. And you knew nothing about the facts and circumstances connected with their entries in the first instance?

A. Well, I don't know whether I do or not; I don't recall that now.

Q. You don't know who they were located by?

A. No, I don't know who they were located by. If my memory is deficient, it is my misfortune and not my fault, sir.

Q. Then, if you did not know anything about the circumstances connected with their entry and with their location and who located them and the arrange-

(Testimony of John B. Catlin.)

ments that were then made, you are unable to say, are you, as to the facts that they made the entries solely by an agreement that they then made to Mr. Cobban, and got the money that they did receive from you and the exact amount that they received from you?

A. No, sir, I do not know anything of the kind.

Q. You are unable to say one way or the other in regard to that?

A. Well, if I don't know, of course, I can't state. I know of no agreement whatever; I knew nothing about any; I don't recall anything about their cases until I was called upon to go to Helena with them to make their proof, and when you go back of that, I am at sea; you take me where I do not and did not know anything about it.

Q. It is sufficient for the Government to start with you from Missoula to Helena? A. Yes, sir.

The EXAMINER.—Is that a question?

Q. Now, then, you say that you were authorized by Mr. Cobban to pay them $100 over and above their expenses? A. I did not say so.

Mr. BICKFORD.—We object to that, to the statement made by counsel, that the witness had testified that he was authorized by Mr. Cobban to pay these people $100, no such statement having been made by the witness heretofore in his testimony.

Q. What do you say, Major?

A. I say that I was authorized by Mr. Cobban, he

(Testimony of John B. Catlin.)

gave me figures which he was willing to pay for that land, and I could get a deed to that land or I could secure that amount that he had already loaned them by a mortgage.

Q. The figures that he gave you amounted to $100 over and above the expenses in each case, did they not?

Mr. BICKFORD.—The same objection to that question.

A. I don't know whether they did or not; they amounted to that much I am satisfied.

Q. And those directions which you received from him, you carried out in Helena?

A. I did.

Q. And he said nothing to you at that time and place?

A. Who?

Q. Mr. Cobban.

A. At what time and place?

Q. Wait, I want to finish my sentence. He said nothing to you when you left him at Missoula to go to Helena with these people about the arrangement that he had made with them?

A. No, sir, he did not.

Q. And you had no understanding whatever of any kind that you were to get this land before you left Helena?

A. No, sir; I have stated a number of times here just exactly the way this thing came up and what transpired, and I don't know what I can add to it.

(Testimony of John B. Catlin.)

Q. I just wanted to find out exactly—I am perfectly willing to say that the theory of the Government is that you knew all about it, and that you acted purposely in pursuance of the arrangement that you had made with your chief before you left Missoula?

Mr. WALSH.—I move to strike out the statement of counsel; there is no question put to the witness. There is no question put to you, Major.

The EXAMINER.—Don't made statements, just ask questions.

Q. You were six times indicted by the Federal Grand Jury for subornation of perjury, were you not?

A. I think so; I believe that is right.

Q. In getting these people to swear falsely?

A. I think that is right, sir.

Q. And you are under arrest now and awaiting trial?

A. Yes, sir.

Q. And you wish it to be understood that you did not know at any time and had no reason to understand that these people had made an arrangement with Mr. Cobban by which they were to get $100 for their land?

A. No, sir, I did not. I am willing to swear and to stand on that; I have stated half a dozen times just exactly the facts in the case.

Q. You know Vital and Levi Cyr, do you not?

A. I know of them, but I don't think I had anything to do with them whatever; I don't recollect that I did. I know the men; I would not know them apart, but I

(Testimony of John B. Catlin.)

know one of them is named Vital Cyr and the other is named Levi.

Q. You had nothing to do with them, you say?

A. I think not; I don't recollect it.

Q. Did you have anything to do with Nellie J. Ehle?

A. Oh, I think I made her papers out, her application.

Q. Don't you know that you made the application in all of that branch of the case, that is, the whole Reeve crowd, John B. Reeve and his wife, and Nellie J. Ehle and her husband and her sister and her sister's husband?

A. No, sir, I don't know anything about her sister and her sister's husband; I know that I made the application for John B. Reeve and wife, Ehle and wife and Starky and wife, and further than that I don't know any of the Reeve family.

Q. Very well; that is all of the relatives that are referred to. You knew that Starky and Ehle had married sisters? A. Yes, sir.

Q. And that they were both daughters of John B. Reeve? A. Yes, sir.

Q. There are six that you mentioned there, are there not? A. Yes, sir.

Q. Did you not have entire charge of their entries as far as doing the work in the land office was concerned?

A. I did, as far as making their applications was concerned.

(Testimony of John B. Catlin.)

Q. When did you first find out that they were going to enter their land?

A. I have no idea. They lived up in the Blackfoot country and I had no idea of anything about it. When I first became acquainted with the fact of their making an entry I could not recall, now.

Q. Are you sure that they were living in the Blackfoot country at that time?

A. I am not; I know that they had lived up there, Reeve had lived in the Blackfoot, I don't know anything about his sons in law. Reeve had lived there I know, and whether his sons in law had or not I don't know.

Q. Don't you know as a matter of fact that John B. Reeve had not been living anywhere near the Blackfoot country at the time he entered this land?

A. No, I do not.

Q. Don't you know that he was living just outside of Missoula, and hauling wood into town?

A. I think he was hauling wood into town, yes, sir.

Q. When was your attention first called to these entries?

A. I suppose my attention was first called towards the date that the application shows, for that shows when I met them. I could not give you any idea within six weeks or within two months of when they were made, but my attention was probably called to it, and I wrote their application. I have lots of other work to do there, and I wrote these applications as they were presented

(Testimony of John B. Catlin.)

to me. I did not go around hunting them nor did not write out one and then sit down and wait for another to come in; I wrote them as they were presented, handed in by Mr. Griswold or anybody that was locating these people.

Q. Did you know who located these people?

A. I possibly did at the time; I don't now.

Q. You have no recollecting of charging any of these people, the Reeve family or the Dodds or the Bryans for any service of your own, did you?

A. I never charged them a cent, no, sir, not one of them. All the papers that I ever made, I never charged one of them a cent.

Q. Why not?

A. I was working for wages; my time was not my own.

Q. But the time that you were paid for belonged to Cobban and Dinsmore? A. Yes.

Q. And you did all of this work for all of these entrymen and entrywomen as a part of your employment for Cobban & Dinsmore?

A. Yes, sir.

Q. And the same thing is true, is it not, of all the subsequent work that you did on that otherwise, looking up the publications and correcting them?

A. Most assuredly it was, yes, sir.

Q. And going to the land office and going to Helena and so on, that was all under your general employment with Mr. Cobban? A. Yes, sir.

(Testimony of John B. Catlin.)

Q. Can you recall any of the facts and circumstances connected with the money that was paid into the land office on the Reeve family deal?

A. No, I cannot.

Q. Did you pay the money in yourself?

A. I don't think I was present when they made their proof?

Q. You don't know whether you were or not?

A. No, I don't.

Q. If that was so you have forgotten it?

A. Yes, that is right; if it was so I have forgotten it.

Q. Do I understand you as saying that you have now no knowledge or recollection as to your having done anything in the matter at all except to draw the papers for them?

A. I say that I do not recall any further connection with it and I don't at the present time, but I don't deny that I did have; I possibly might have had.

Q. You knew what they were doing, did you not?

A. I knew what they were doing of course when they made their applications; I knew they were taking a piece of land under the Timber and Stone Act; certainly I did.

Q. You knew at that time what they were going to do with the land after they made their final proof, did you not? A. I did not, no, sir.

Q. When did you first find that out?

A. When I found that they had after they had sold,

(Testimony of John B. Catlin.)

then I had every reason to believe that I knew all about it.

Q. That was the first knowledge that you had?

A. Yes, sir.

Q. After they had sold?

A. After they had sold, yes, sir.

Q. If you did not know at the time that you drew their applications, at the time of their filing, that the filings were made in the interest of the man that you were working for, Mr. Cobban, why did you not charge them for your services?

A. I was employed by Mr. Cobban, as I stated, and my time was not my own, and Mr. Griswold or whoever his cruisers were, they were employed by him to estimate timber, and they sent a party in there with a slip of the description of a piece of land that they desired to file on with the names of the witnesses and the dates and everything, and I went on and made their papers; right then and there my connection with that case ceased.

Q. When you made the papers for them, you knew very well that it had something to do with the firm, did you not?

A. I knew that when Mr. Griswold brought in or sent in an application of that kind, I knew what it was for of course; I knew who employed him; the same man employed him that employed me.

Q. And that is the reason that you did not charge these entrymen and entrywomen for your services?

(Testimony of John B. Catlin.)

A. Yes, that was one reason. I made a great many of those papers for people that I did not charge for when I was working for myself.

Q. Then if these entries were made under the direction of Mr. Griswold, who was working for the same man that you were, namely Mr. Cobban, didn't you know or think that these entries had something to do with the business of your principal?

Mr. WALSH.—We object to that because he has already answered the question, and because it is entirely immaterial what he thought about the matter.

A. Well, I don't know.

Q. It influenced your conduct so much that you did not charge them anything?

A. I am not in the habit of charging for such work.

Q. Do I now understand you that the reason you did not charge for doing this work, drawing all these papers and going to the land office, was not because you were working for Mr. Cobban, but because you were not in the habit as a man of making any charges at all?

A. No, sir. As I stated two or three times on the stand here, my time was not my own, and I made no charges for this work. I was employed there, getting paid for my time, and if this work came to me I could just as well be at that as anything else; I did not have to go and inquire into it; the estimators sent in the papers and I made them, and that is all it had to do with me.

(Testimony of John B. Catlin.)

Q. Is that the reason you did not know that this work was being done for Mr. Cobban, because you did not inquire into it?

A. What work was being done for Mr. Cobban; I would like to understand that question.

Q. (Question read.)

A. I never stated on this stand that I did not know who this work was being done for.

Q. Now, I ask you did you know then who this work was being done for?

A. I knew who I was working for and who Mr. Griswold was working for, and we were working for Cobban & Dinsmore.

Q. Then do I understand you to take that for an answer and say that the work was done for Mr. Cobban and you knew it was?

Mr. WALSH.—What work?

Mr. MAYNARD.—Drawing these papers.

Mr. WALSH.—We object to the question because it is indefinite, the witness is not told what work is referred to.

Mr. MAYNARD.—He has been told and he knows perfectly well that I referred to the work of drawing these papers at the time of making these filings.

A. The work of drawing these papers was sometimes done at the request of Mr. Cobban himself. I do not pretend to deny but what it was done for him, sir.

(Testimony of John B. Catlin.)

Whereupon further hearing was adjourned until Wednesday, April 23d, at 10 A. M.

Wednesday, April 23d, 1902, 2 P. M.

Hearing resumed pursuant to adjournment.

JOHN B. CATLIN, recalled for further cross-examintion as a witness for defendant.

(By Mr. MAYNARD.)

Q. Major, were either Miss West or your wife consulted in regard to the question of whether they would sell the land or not? A. They were.

Q. It was their act and their own will rather than yours?

A. I can not say as to that; I undertook to explain and did explain the situation to them, that I wanted security for this amount of money that I had borrowed, and directed my conversation particularly to Mrs. Wright as she was going away, and she said that she would sell her claim. I could not give her any definite answer as to what I would be able to offer her for it.

Q. As a matter of fact, did she not turn the whole matter over to you and trust to you to get as much for the land as you could, and act entirely upon your judgment?

A. She turned the matter over to me and left it entirely to me as to making her application, filing and getting the claim for her, and you might say it was all turned over to me; but, when it came time to do something with this claim to secure the amount of money

(Testimony of John B. Catlin.)

that had been loaned, I had to consult her in that matter.

Q. Did not she leave the property in your hands to be sold with the understanding between yourself and her that you would get as much for her as you could?

A. She did.

Q. Then you understood that she was to sell the land?

A. There was no understanding about it until she had—she left this to me after the proof was made, but up to that time I had handled this for her; I had assisted her in getting her claim, as I have stated.

Q. What was the difference between your management of the matter before final proof and after?

A. After final proof I consulted her as to whether she wanted to secure the loan by a mortgage, or whether she wanted to sell the claim.

Q. Wasn't the whole thing understood between you, that you were to take charge of it for her, and secure the claim and sell it for her best advantage?

A. It was not; it was after I had had this talk with her that completed the arrangements; there was no agreement prior to that time, though, any further than I was, as I stated that I should secure her claim and assist her in acquiring title by borrowing the money.

Q. And there the matter stopped?

A. It did, until after her final proof was made.

Q. Didn't you understand that she was to deed the property? A. No, sir.

(Testimony of John B. Catlin.)

Q. Didn't you have the deed drawn up before you went to Stoddard's office?

A. I did not; no, sir.

Q. I read from page 2107 of the record, from Mrs. West's testimony: "Q. Then on this same day that you gave your final testimony and Mr. Catlin paid this money into the land office for the purchase of your land, you sold it to Mr. Cobban, didn't you? A. I did. Q. Do you remember whether you went to the land office and the money was paid in by Mr. Catlin before dinner? A. At the land office, yes, sir. Q. And did you sell before dinner,too? A. Well, I don't remember what hour of the day it was when we got through. Q. Did you go right from the land office to Mr. Cobban's office? A. No. Q. What did you do in the meantime? A. I went to the notary public's office to execute the deed. Q. Who went with you? A. Mr. Catlin. Q. What was the notary public's name? A. Stoddard Q. Who was in Mr. Stoddard's office at the time you signed the deed? A. Mr. and Mrs. Catlin and myself. Q. How long were you there? A. A very short time; I could not say; I did not time myself. Q. What was done there? A. Well, we signed the deed before the notary public. Q. Who has the deed? A. Mr. Catlin; I supposed, of course, that Mr. Catlin had it; I did not have it. Q. Was Mrs. Catlin's deed signed at the same time? A. Yes, sir. Q. Then, as a matter of fact, while you cannot remember the time you were there, you were there simply what time it would take

(Testimony of John B. Catlin.)

to sign your name to the deed, the Catlin deed, and leave the office? A. I think so. Q. Now, then, on this day after that, you received some money for yourself, didn't you? A. Yes, sir. Q. How much did you receive? A. One hundred dollars. Q. Who paid you that? A. Mr. Catlin." Is that testimony true or false?

A. That testimony is true as far as my paying her the money, and as far as her going to the office, but I want to say that I went to Mr. Cobban's office after I had talked with them. Mr. Cobban's office was just across the street. I went in there and I secured the blank deeds after he had made an offer there for the land, and I went into Mr. Stoddard's office—Mr. Cobban did not—and there the deeds were executed, right there. That is my best recollection of the matter, and I think is absolutely true.

Q. And Mrs. West on page 2113 was asked: "Now, at the time when you returned to the land office, as I understand, Mr. Catlin was your attorney in this matter? A. He was; I placed the affair in his hands entirely, and trusted him entirely that he would do the best he could for me to sell the land for me."

A. That is true.

Q. Now, if the matter was placed in your hands by her, relying upon your ability to sell her land, how can you say that it was not talked over between you that that work was to be done?

A. There was no conversation as regards selling this land at all until such time as we were returning from

(Testimony of John B. Catlin.)

the land office, when this question of securing the loan was brought up by me.

Q. Now, referring to this going up in the mountains with Mr. Barrett, you said that you went up with him?

A. Yes, sir.

Q. Do you wish to be understood as desiring to create the impression that they were the only persons that you went up with, that he was the only man that you went up with at that time?

A. I think there was but Mr. Barrett and Mr. Griswold and myself.

Q. That was the company that went out to locate the lands after you left the Clearwater? A. Yes.

Q. What I wish to ask you is this; did you desire to create the impression and leave it on the record that when you went up to Clearwater from Msisoula that there were no others in your party?

Mr. WALSH.—The question is, did you desire to create that impression?

A. I think I was asked the question, and I will state to the best of my recollection that I went up on the stage, and there was but three of us in the stage, the driver, Mr. Barrett and myself; that was my recollection of it.

Q. You mean from Bonner; didn't you go on the railroad train to Bonner and there leave the train and take the stage at Bonner?

A. I am inclined to think I did; yes, sir. I know we went up on the stage. We might have gone up on the

(Testimony of John B. Catlin.)

train. I have been up on that train as far as that goes.

Q. At that time, when you left Bonner, wasn't not only Mr. Barrett with you, but Mr. Pelky, Thomas Pelky and Mr. B. Frank Chattin, and Mr. White and Mr. Cobban? A. No, sir.

Q. They were not? A. No, sir.

Q. And a man by the name of Walsh, who made an entry under the Stone and Timber Act, who went insane before he could give his final proof in the case; were they not all in your party and under your supervision? A. No, sir.

Q. Mr. Cobban was not along? A. No, sir.

Q. Just you and Mr. Barrett?

A. I think that was all; Mr. Barrett and myself and the stage driver from Bonner.

Q. I read from page 1503 of the record of the testimon of Mr. Leonard Barrett: "Q. Who did you go with up into the mountains? A. I think there were six or seven went at the time; I did not know any of them, only Mr. Catlin. Q. Who? A. Major Catlin. Q. Hadn't you ever seen any of the others before that? A. I may have seen them, but I was not acquainted with them. Q. Did you find out afterwards who they were? A. No, sir; I heard their names, but I do not remember them; I did not remember them fifteen minutes afterwards; they were all strangers to me. Q. Major Catlin took you up there, did he? A. I went up with Major Catlin. Q. With the rest of the party? A. Yes, sir. Q. How did you go? A. By stage. Q. All went to-

(Testimony of John B. Catlin.)

gether? A. Yes. Q. From where did you go? A. From Bonner; that is, I went to Bonner by— Q. Rail? A. By livery rig. Q. All of the party went by livery rig? A. No, just Major Catlin and myself went from Missoula to Bonner, and I think there were six or seven in the party with us. Q. They went the rest of the way with you? A. They went the rest of the way with us; yes, sir. Q. How far did you go by stage? A. To Clearwater. Q. To Clearwater? A. Yes, to Clearwater. Q. Then did you get off there? A. I believe so; I believed they all stopped. Q. Where abouts? A. At Clearwater postoffice, at a little hotel there." Is that testimony true or false?

Mr. WALSH.—Objected to as immaterial, irrelevant and incompetent and not a proper way to examine the witness, to read a whole lot of testimony and ask him if it is true or false. It is also not proper cross-examination.

A. We might have been joined, Mr. Barrett and myself, by some other parties on the road after we left Missoula, but I cannot say that we were; I do not recollect that.

Q. You are not prepared, then, to say that Mr. Barrett's testimony that I have read to you, is not true?

Mr. WALSH.—The same objection to the question.

A. I am prepared to say that I think Mr. Barrett is mistaken.

Q. You are not prepared to say but what the parties

(Testimony of John B. Catlin.)

which he then referred to were Mr. Pelky and Mr. Chattin and Mr. White and Mr. Walsh.

Mr. BICKFORD.—In the testimony read by counsel from the record there does not appear to be either the name of Chattin, White or any other of the other names mentioned by counsel therefore we object to the question as being not one that is supported by the record read by counsel, and not one which is proper cross-examination.

Q. Please answer the question, Major.

A. Please read the question.

Q. (Question read.) And that also Mr. Cobban, your employer, was along?

A. I am not prepared to say that none of these parties were there, but I am prepared to say that I was selecting land near Mr. Barrett's land, and he and I were instructed that Mr. Griswold would go with us after we got to Clearwater, and I am prepared to say further that these people did not go with us from there, and if they went from there they must have gone in some other direction; I do not recollect their going with us at all. There were just the three of us.

Q. I admit that that is so, after you got up to Clearwater, Griswold, one of Cobban's agents, located you and located Mr. Barrett. Now, I asked you if Mr. Gilles at that time did not locate two of the other party, Mr. Pelky and Mr. Chattin?

A. I cannot say. Mr. Gilles was living at Clearwater at the time. I never knew of his locating anyone on there.

(Testimony of John B. Catlin.)

Q. And at that time, Mr. White and Mr. Walsh, the other two, were located by Mr. Cobban himself?

A. I could not say.

Q. And after you returned from the mountains down to Missoula with Barrett, you went with him to Helena?

A. I did.

Q. And you paid the money in for the land yourself?

A. I think I did; yes, sir.

Q. And took entire charge of that matter?

A. I did that far; yes, sir.

Q. And secured the deed from Barrett to Cobban?

A. No, sir; I did not.

Q. But you know that the deed was secured?

A. I have every reason to believe it was; I never saw it.

Redirect Examination.

(By Mr. WALSH.)

Q. Major, from what source do you derive your pension that you draw?

A. From the Government of the United States.

Q. For what?

A. For services in the Civil War.

Q. Were you in the army?

A. Three years; yes, sir.

Q. During what period?

A. 1862 to 1865; I was in the army from about the 4th day of August, 1862, to about the 20th day of July, 1865.

(Testimony of John B. Catlin.)

Q. How did you say you came to meet this man, Leonard Barrett?

A. I met him as an old comrade.

Q. A Grand Army man?

A. A Grand Army man; yes, sir.

Q. Major, were Cobban's operations in the acquisition of timber lands in the year 1899 confined to the acquisition of lands acquired under the Stone and Timber Act? A. No, sir.

Q. To what extent did it go?

A. Mr. Cobban was purchasing land—scrip land, or locating scrip, and he purchased some claims upon which homestead proof had been made.

Q. You said, I believe, Major, that you knew the two Cyrs, Levi B. and Vital Cyr?

A. I have met them, and the name is familiar, but I don't know that I would know them—the same as I met other parties, I am often introduced to them, and talked to them, and then pass on, and they would go of my memory. I could not locate them.

Q. They testified, Major, that you wrote out their original filing papers. Do you recall that fact?

A. I do not particularly. I wrote a great many of them and I do not recall their particular cases.

Q. Now, they testified also with reference to that matter, that they went out and selected their land with the assistance of Mr. Seely only, and that they did not know nor hear anything about Mr. Griswold nor Mr. Jemison, nor these other people concerning whom you

(Testimony of John B. Catlin.)

have testified, and I take it they could not have brought to you any memorandum signed by any of those gentlemen. Do you remember making out any filing papers during the year 1899 for any people who did not bring a memorandum from Mr.— A. I do.

Q. In other words, that was not an indispensable requisite when you went to make out filing papers?

Mr. MAYNARD.—Objected to as leading and not proper redirect examination.

Q. What have you to say, Major?

A. It was nothing uncommon; no, sir, for me to take papers without those slips.

Q. How old are you, Major?

A. I am 64 years old; I will be 65 the 21st of next June.

Q. Now, it appears that in the case of some of these entries, Major, you paid the money for the publication to the newspaper. I wish you would state whether in the conduct of your business as a land attorney since you have been practicing at the land office at Missoula, you ever did that on any other occasion than on these occasions in 1899?

A. Yes, on many other occasions; I do that very frequently; I do it to this day.

Q. And does the publisher of the newspaper ordinarily exact of you, when you send a notice to him, a contract or obligation upon your part, that you will pay him, or is your credit fairly good with the newspaper publishers?

(Testimony of John B. Catlin.)

A. They never exact any contract; they never receive any money, or never have from me, until the affidavit of the publisher with the notice attached is furnished of the proof.

Q. You present a notice of publication to the newspaper, and they ordinarily publish it without very much question, don't they? A. Yes, they do that.

Q. You were asked, Major, about whether any of the entrymen or entrywomen mentioned in the bill of complaint made proof without borrowing money from Mr. Cobban. Do you know anything about Mrs. Kilburn borrowing any money from Mr. Cobban with which to make her final proof? A. I do not.

Q. Do you know anything about George Dildine borrowing any money from Cobban with which to make his proof?

A. No, sir, I have no knowledge of where he got his money.

Q. It is charged in the complaint, Major, that at some time subsequent to the 1st day of January, 1898, one, R. M. Cobban, of Missoula, in the State and District of Montana, claiming to act for the use and benefit of the defendant herein, being W. A. Clark, in so doing set about the business of procuring title to and possession of the hereinbefore described land of your orator—meaning the land described in the complaint—and that in pursuance to such avowed purpose, said Cobban entered into a contract in writing with one, C. L. Griswold, of Clearwater, in said State and Dis-

(Testimony of John B. Catlin.)

trict, which contract bears date the 22d day of May, 1899, for the stipulated purpose therein stated of obtaining land from your orator, the Government of the United States, under the act of Congress hereinbefore cited—meaning the Timber and Stone Act—and which could only be carried out and accomplished by procuring of false and fraudulent statements in writing and under oath and false and fraudulent proofs to be reduced to writing and sworn to and subscribed by the parties who should enter the land in parcels not exceeding in the aggregate 160 acres to each; that said Cobban in and about said business associated with himself also one, John B. Catlin, of Missoula in said State and District; that the three parties, Cobban, Griswold and Catlin, by and through themselves and others, examined the land, procured various persons of both sexes for hire to enter the lands under said act, paying their expenses and those of their witnesses, and paying the price required to be paid by the proper land office of the United States within the jurisdiction of which said parcels of land were respectively situated. That after such sworn statements were made by the persons so employed, and final proof made respectively and the money paid for the witness' expenses, the entrymen and entrywomen's expenses, the land office fees and the price required by said acts of Congress so cited—what have you to say as to your own individual connection with any such parties or any such act?

(Testimony of John B. Catlin.)

Mr. MAYNARD.—I object to that as not proper redirect examination.

A. I have this to say, that I was employed by Mr. Cobban and Mr. Dinsmore long prior to the time that any of this timber land was taken, and knew nothing about anything of that kind until such time as Mr. Griswold went into the employ of Mr. Cobban, and I was called upon, being familiar with the forms, to make out some applications; that was the first knowledge I had of it.

Q. What have you to say as to what is the fact of your having associated yourself with Mr. Cobban for the purpose mentioned in the complaint and which I read to you?

A. I did not, sir; it is false.

Q. What do you know of any enterprise of that kind having been entered into by Mr. Cobban?

A. Nothing whatever.

Q. What have you to say as to having induced anybody or attempting to induce anybody in the making of these entries, to make any false or fraudulent proof or statements of any character?

A. I know nothing of my own knowledge, and from what I know of Mr. Cobban I am fully convinced that he has never done anything of the kind.

Mr. MAYNARD.—I object to that, and I move that that be stricken out, as not being responsive to the question and as entirely incompetent for Mr. Catlin to

(Testimony of John B. Catlin.)

express an opinion and from that opinion draw certain inferences as to what Mr. Cobban would or would not do.

Q. The question, Major, that I put to you is as to whether you did or did not at any time endeavor to induce any of these entrymen to make any false or fraudulent proofs with reference to their entries?

A. No, sir, I never did.

Q. And what do you know about anybody else having attempted to do so?

A. I don't know a thing about it; I don't know of anybody ever attempting anything of the kind.

Q. What have you to say as to the currency of rumors during the year 1899, in Missoula, and in that neighborhood to the effect that Mr. Cobban was hiring all these entrymen or any of them to take up timber lands in the Blackfoot valley?

A. I know nothing about it.

Q. What was Belle Bryan doing at Clearwater when you met her there?

A. I would like, before answering that question, I am a little mixed on those. There were two of those women, and one was a school teacher, and one was stopping at the hotel.

The EXAMINER.—This is the one that married Gilles.

Q. This is the one that married Gilles subsequently. Do you know what she was doing there at that time?

(Testimony of John B. Catlin.)

A. Why, she seemed to be in charge of the hotel or stopping there or helping there.

Q. How long have you known this man, Charles Moss?

A. I have known him since shortly after I went in the employ of Cobban & Dinsmore in Missoula.

Q. Have you known him ever since?

A. Yes, sir.

Q. Counsel called him a crippled peddler. Do you know of any provision of the law that prevents a peddler from acquiring land under the Stone and Timber Act, Major? A. I do not.

Q. And as far as your acquaintance with the law is concerned, is it of any consequence that he is crippled?

A. No, sir.

Q. I wish you would state whether you have any knowledge as to Mr. Moss' ability to gain a livelihood for himself and his father and mother?

A. Well, I will state that Mr. Moss lives with his parents on a small place up the Rattlesnake, say, a mile and a half from town. They are engaged in raising small fruits, garden stuff and they keep some chickens and this young man sells eggs as they have them to spare, and he sells fruit from house to house, I suppose to regular customers, as I see him on the same route about every other day, going around with berries and so on.

Q. They are self supporting, decent people, are they not?

(Testimony of John B. Catlin.)

A. Very, yes, sir; they are fairly well to do people, too.

Q. Now, you told counsel that prior to the time that the Dodds had made their final proof upon their land, you had made with them neither any agreement for security nor for the purchase of their lands. Who as far as you know did make the agreement with the Dodds; with whom you went to Helena, to advance them the money necessary to make their proofs?

A. Well, I will say that Mr. Cobban must have.

Q. Now, did you at any time overhear any arrangements made between any of these entrymen and Mr. Cobban by which Mr. Cobban agreed to loan them the money necessary to make their final proof?

Mr. MAYNARD.—I object to that as not proper redirect examination.

A. I don't know that I can say that I did. Mr. Cobban had one room in the office and I had another, and I can say that I arranged with him in the cases that I have mentioned here to borrow money.

Q. In your own case and in the case of Miss Wright and Mrs. Catlin? A. Yes, sir.

Q. Now, do you recall any other cases, Major, in which you yourself knew by overhearing the conversation between Mr. Cobban and the entrymen and of the arrangements between them with reference to his advancing the money?

Mr. MAYNARD.—I object to that question because

(Testimony of John B. Catlin.)

it has been already answered. The Major said that he did not overhear anything, that he had one room and Cobban had the other.

Mr. WALSH.—When did he say so?

Mr. MAYNARD.—Just a minute or two before.

Mr. WALSH.—No, he did not.

Mr. MAYNARD.—Just read the answer, Mr. Stenographer.

The EXAMINER.—There is no need of doing that. Just answer the question.

Mr. MAYNARD.—I will ask you, Major Catlin, if you did not say that a moment ago?

Mr. WALSH.—The witness is with me. Read the question.

The EXAMINER.—Yes, that is right.

Q. (Question read.)

A. I do not.

Q. Counsel asked you whether in the case of the Dodds the fact would not be that you would be out or Mr. Cobban would be out the amount of money that was advanced to them, provided they should sell their claim to someone else before you would be able to get an attachment on them in case they refused to give a mortgage. Are you familiar enough with the business of selling timber lands up in the Blackfoot country, to speak about the degree of risk you would run of these

(Testimony of John B. Catlin.)

people being able to find a purchaser for their claims quicker than you could get an attachment on them?

A. Well, I will say it would be a pretty hard matter to do. I don't know what the risk would be. Understand me, I don't know what risk one was running. I am not an attorney, and I don't know what process of law would have to be gone into to secure it.

Q. Major, are you familiar enough with the rapidity with which sales of timber lands can be made to speak about the matter; what have you to say as far as you are acquainted with the business, as to the possibility of these men making an immediate sale of their land up in the Blackfoot country after they had made proof?

Mr. MAYNARD.—I object to that on the ground that it is purely speculative, and the witness has shown that he is entirely incompetent to express an opinion upon such a speculative question.

Mr. WALSH.—It is just as speculative as the matter brought out on the cross-examination to which it is directed.

The EXAMINER.—Very well, let him answer.

A. Well, I will say that I don't think, the way these sales were made there, that a man was taking any chances that the land could be sold so rapidly that one could not have time to protect himself.

Q. You were asked by counsel whether you were not indicted by the Grand Jury six times for perjury and subornation of perjury in connection with these entries.

(Testimony of John B. Catlin.)

I would like to ask you whether you have not filed pleas in abatement to those indictments, charging that they were returned by the Grand Jury by reason of improper influences and misconduct before the Grand Jury of the counsel who has questioned you here on behalf of the Government? A. I have.

Q. You were employed, as I understand you, during the year 1899, by Cobban & Dinsmore at the rate of $100 per month, and that you yourself didn't charge these entrymen for your services in making their filings?

A. Yes, sir, that is right.

Q. Did you charge anybody else for services that you rendered while you were working for Cobban & Dinsmore?

A. No, sir, I was working for wages.

Q. Now, you told the counsel, Major, that you did not know what Mrs. Catlin was going to do with her claim at the time that she took it up. How did it come about that you did not know about that matter?

A. I had never talked with her about it. If I was allowed to make a guess, I would say that she was not going to build a sawmill and was not going to do any logging or anything of that kind, but I never had any direct conversation on the subject with her.

Q. To what purpose can these timber claims be put, Major?

A. I don't know of but one purpose that they can be put to.

Q. What is that?

(Testimony of John B. Catlin.)

A. And that is to be taken up for anything else and to be sold to the companies that are able to handle them, to manufacture lumber from them.

Q. Do you know enough about the lumbering business to tell us whether it is possible from a commercial standpoint for a single individual, taking up 160 acres of land, to put up a sawmill and saw up the logs upon that 160 acres into lumber?

Mr. MAYNARD.—I object to that question and to all of these questions as purely speculative, and no foundation whatever has been laid as to his knowledge; as leading, and in violation of everything that is known to the law in evidence and as cross-examination of counsel's own witness.

A. I do not. I do not know that a case of that kind ever came under my observation, and I don't think it is done. A sane man would not do it.

Q. My question was whether you are familiar enough with the lumber business and the sawmill business to know whether it is possible from a commercial standpoint for a person to build a sawmill for the purpose of cutting down and sawing into lumber the timber that grows on 160 acres of land?

A. It is not possible.

Q. Now, you yourself, Major, are not able, as I understand you, to make an accurate estimate of the amount of timber that grew upon the land that you took up?

A. No, sir.

Q. Did you have anybody else do it for you?

(Testimony of John B. Catlin.)

A. It was done, I suppose, by Mr. Griswold, who was in the employ of Mr. Cobban.

Q. What do you understand as to what Mr. Gisiswold's duties in the premises were in reference to the estimation of the timber on the land?

A. His duties, as I understand them, were to cruise this land, that is, to go on the land and make estimates of the timber growing on the land, and to submit his estimates to Mr. Cobban.

Q. Now, you told us that Mrs. Catlin's deed was not delivered until several days after it was executed?

A. Yes, I think it was; I should say three or four days.

Q. In what state was the affairs meanwhile; how was it that you held the deed during that time without turning it over?

A. There was no definite understanding as to what she would get for the claim.

Q. So that it was not until some three or four days afterwards that the bargain between yourself representing your wife and Mr. Cobban was actually concluded?

A. That is right, sir.

Q. Now, Miss Wright, you say, as far as you know; paid her own expenses in and out from Stevensville?

A. I think so, yes, sir.

Q. Where did she stay while she was at Missoula?

A. She stayed a part of the time at my house, and she stayed a part of the time with a friend of hers there—that is, she so reported, that she was with a friend, a Mrs. Stewart.

(Testimony of John B. Catlin.)

Q. Did you charge her board while she was at your house? A. Oh, no.

Q. Now, in purchasing the land from her, Major, did you reimburse her for the expenses that she had been at for the trip in and out from Stevensville?

A. No, sir, not to my recollection.

Q. She made, of course, two trips; one to file and one when she made her final proof?

Q. Yes, sir.

Q. So, that if you were figuring the exact profit she got, it would be something under $100, wouldn't it?

A. I think so, yes, sir, it would,

Q. Less than that by the amount of her expenses in and out from Stevensville?

A. Her expenses would be nothing in Missoula; she had friends there; but her traveling expenses, of course, would have to come out for the two trips.

Q. You were questioned by counsel as to your knowledge of any means of the man, Gilles, whom he calls the drunken cook, had to purchase any land from the Government of the United States. I wish you would tell us whether you know of any means that this drunken cook had to buy out Mr. Griswold's place at Clearwater?

A. I do not.

Q. Do you know whether he did or did not purchase Mr. Griswold's place?

A. I only know what I heard; I heard that he did.

Q. Was he in charge of the place at any time when you were there on any of these trips?

(Testimony of John B. Catlin.)

A. I think he was; yes, sir.

Q. Now, what knowledge have you of any agreement entered into by Gilles or by Belle Bryan or Lelia T. Bryan or Edgar Lehman to the effect that they would convey their claims to Mr. Cobban? A. I have no knowledge.

Q. Now, you told us, Major, that in specific instances—in the case of the Dodds, for instance—you were authorized by Mr. Cobban to buy the claims, provided you could get them for a certain amount. I wish you would tell us about what the amount of the purchase price of these claims ordinarily was.

Mr. MAYNARD.—I object to this question as not redirect examination and as having been traversed by counsel.

A. Well, I really could not say what the average would be; I think, though, that in these cases that I have mentioned it was about $100 in each case.

Q. You mean the entire consideration was $100?

A. The profit.

Q. I am not asking about what was made over and above the amount which the purchase price was.

A. Oh, about $600.

Q. And in the case of your own claim it was about what?

A. I have stated, I believe, that as to what I received in the case of my own claim, it would be about $750 or $800.

Q. For the purpose of refreshing your recollection concerning the amount that Mrs. Catlin got over and above

(Testimony of John B. Catlin.)

the amount that she expended in the purchase of the land, her testimony was that she received $125, Major. If your recollection is refreshed from her testimany in this way, have you now any clearer recollection as to the amount which she did get? A. I cannot say that I have.

Q. You went out on the land, did you not, with your wife and Mrs. West, Major, I think you said so?

A. Yes, sir.

Q. Mr. Kilburn went along with you?

A. Yes, sir, Mr. Kilburn joined us at Clearwater to show us the land.

Q. Now, under these circumstances, do you think the fact is that Mr. Kilburn gave you any slips with the description of the land and the name of the witnesses on it with refernce to these three entries? A. No.

Mr. MAYNARD.—I object to that; it is difficult to be patient with such a method of examination, but I hate to be continually interrupting, but I object to this and all the other questions that have preceded this as so clearly incompetent as to as to take it beyond the realm of ordinary objections.

A. I don't think he did; I was perfectly familiar with it myself, being connected with it in that way.

Q. Now, do you recall your attention is directed to the matter any entries in which you did get a slip signed by Mr. Kilburn.

Recross-examination.

(By Mr. MAYNARD.)

Q. If Cobban was paying a profit of $100 to these entrymen and entrywomen, why did he pay you more?

(Testimony of John B. Catlin.)

Mr. WALSH.—We object because there is no foundation for the hypothesis, if he was paying $100 to the entrymen, and if the counsel wants to know why the witness was paid $250 instead of $100, he should ask him so.

A. I will state that these claims were, as I understand, purchased according to their valuation. My claim might have been worth $500 more than some of these claims that brought $100.

Q. That is your answer?

A. That is my answer; yes, sir.

Q. That you have no knowledge whatever of your own as to the amount of timber that was growing on your location, had you?

A. I don't recollect that I ever had seen the estimate; I don't know but what I had, I am not sure.

Q. Can you state why it was that you were able to pay on the same day $100 to Mrs. Wright and not agree upon the amount that was to be paid your wife?

A. I have repeatedly told you that I mentioned this subject to Mrs. Wright as to securing the loan of that money, and I went to Mr. Cobban and he authorized me to offer so much money for it, and I purchased the ground In my own case, or in my wife's case, I don't recollect that there was any price mentioned at all, because it was not an urgent case; my wife was not going to leave town that night, and the matter rested.

Q. So that when you went to Mr. Cobban, although you got the deed at the same time from both of the ladies, you

(Testimony of John B. Catlin.)

did not say anything to him about the amount that was to be paid your wife?

A. I don't think I did, no, sir. I was about to say that I knew there was no further settlement made that night with Miss Wright.

Q. So, without saying anything to Mr. Cobban about the money which he was to pay your wife, you had her execute the deed just the same?

A. I had her execute the deed; yes, sir.

Q. Why did you have her execute the deed without knowing how much she was to get?

A. I think I had her execute the deed on her own suggestion, and the deed was to be held by me until it was settled. This matter was left with me, and I am inclined to think that that is the way the thing came up. I think it was her own proposition, as she was in there with Mrs. Wright, and Mrs. Wright's deed was executed there, to execute the deed for her land.

Q. That is the way you wish to be understood?

A. Yes, sir, that is the way I wish to be understood.

Q. Now, you said in answer to counsel that Mr. Griswold's employment was to select these locations and make estimates of the value of the timber growing thereon and report to Mr. Cobban?

A. That is my understanding of it, yes, sir; that is, as far as I understand the business.

Q. What do you understand that Mr. Griswold was doing that for?

(Testimony of John B. Catlin.)

A. I understand that he was being paid for it, of course.

Q. By Mr. Cobban? A. Yes, sir.

Q. What was he making these locations and making this estimate of the timber growing thereon for—what purpose? A. He was making them for his employer.

Q. What was his employer, Mr. Cobban, going to do?

A. I have no idea what Mr. Cobban was going to do; it was entirely out of my province.

Q. Did you understand that he was hiring these men and making these locations and making these estimates, that Mr. Griswold and Mr. Jemison were sending in these slips of paper with these locations on, and the descriptions of the land and the names of the witnesses for the location of the entrymen, and that these entrymen came to you to have their blanks filled out with no understanding as to what all that meant?

Mr. WALSH.—Objected to as immaterial and irrelevant, also improper recross-examination.

Q. You had no understanding of what that all meant?

A. Mr. Cobban never took me into his confidence. I was a hired man; I was employed to do certain work, and I did that; and further than that I know nothing about it any more than as the work came under my observation that I was required to do.

Q. Was Mr. Cobban hiring Mr. Griswold to do this work, and Mr. Griswold in his employment sending these men to you to have their blanks filled out for the purpose of loaning money to them?

(Testimony of John B. Catlin.)

Mr. WALSH.—Objected to as purely argumentative and not calling for any facts from the witness, and not proper cross-examination; also as irrelevant and immaterial.

A. I will say as I said before, Mr. Cobban never informed me of his business far enough to enable me to answer that question.

Q. Now, then, if he did not inform you himself, from what you saw was going on, the facts that came to your attention while you were in the office, didn't you know—

Mr. WALSH.—We object to this as asking the witness whether he drew a conclusion from facts which came under his observation, and as being irrelevant and immaterial for that reason, as well as for other manifest reasons, and not cross-examination?

A. I have stated what I knew in the matter.

Q. Didn't you draw any conclusions from the facts that were presented to you?

Mr. WALSH.—We object to that for the same reason. The Court is to draw the conclusions, not this witness.

A. I cannot say that I did. I might have had ideas about it very erroneous ideas, but I don't know that I drew any conclusions, any further than that Mr. Cobban was loaning money.

Q. Were the conclusions which you drew from the facts which you have sworn to, and which were in your possession at the time to this effect, that he was locating men and women on these public lands for the purpose of loaning money to them without any security of any kind?

(Testimony of John B. Catlin.)

Mr. WALSH.—The same objection.

A. Well, no, I did not know of his loaning any money without security.

Q. Did you know of his ever loaning any money to them of any kind with or without security?

A. I certainly did.

Q. Name one man or one woman?

A. He loaned money to me.

Q. Name somebody else?

A. He loaned money to me for my wife and he loaned money to me for Miss Wright.

Q. Very well, that is three.

A. And he loaned money to the Dodds, which was intrusted to me, and I paid it into the land office myself.

Q. Name some more?

A. I cannot do it any further than the money went through my hands; that is as far as I know.

Q. And in each and every one of the cases that you have specified, each of those parties did convey the land that they entered and took from the Government to Mr. Cobban?

Mr. WALSH.—We object to that, because the witness has already said so, and it appears to be a fact on the record.

Q. And that no other security was given in any shape or manner except these deeds by which they conveyed to him?

Mr. WALSH.—We object to that because there is no

(Testimony of John B. Catlin.)

evidence that the deed was given as security, and because the facts are already detailed by the witness repeatedly and repeatedly, and the matter of the question now addressed to the witness is purely argumentative.

Mr. MAYNARD.—In other words, the counsel undertakes by objection to deny me a little of the privilege on cross-examination which he has arrogated to himself so freely on direct examination.

Mr. WALSH.—I move to strike out the statement of counsel.

Mr. MAYNARD.—The nerve of the counsel on the west side of the Mississippi river I have never seen equaled.

Mr. BICKFORD.—I wish you would put down the remarks of counsel.

Mr. WALSH.—You can also indicate the tittering of Mr. Griswold.

The EXAMINER.—I shall be blamed by the Court for allowing such remarks to be made.

Q. (Question read.)

A. I don't think there was any other security given in any of those cases.

Q. Now, if you have some ideas on the subject of what is going on in your office from the facts that were presented to you, didn't you have an idea of the fact that Mr. Cobban was getting these people to take up this land for his benefit?

Mr. WALSH.—The same objection.

(Testimony of John B. Catlin.)

A. I knew of course that Mr. Griswold, in the employ of Mr. Cobban, was locating people on this land from the fact that these slips came in here, and in a number of instances I made their applications.

Q. And unless that was entirely an insane movement on the part of Mr. Griswold and Mr. Cobban, Mr. Griswold who was doing this work for Mr. Cobban, had some intelligent motive in the operation, did he not?

Mr. WALSH.—The same objection.

A. I don't think I am competent to pass upon the insanity of Mr. Griswold or Mr. Cobban.

Q. And if Mr. Cobban was sane in his hiring Mr. Griswold to do this, he had some purpose in it, did he not?

Mr. WALSH.—The same objection.

Q. And you knew it at the time?

Mr. WALSH.—The same objection.

A. I cannot say that I did, no.

Q. You did not notice anything in Mr. Cobban's conduct or speech at the time to make you believe that he was insane, did you?

Mr. WALSH.—The same objection.

A. I don't recollect of anything, no.

Q. Now, you talk about these entrymen having no use for the land that they bought, except to sell again. Cannot a citizen of the United States make an entry under the Stone and Timber Act and go on the land and

(Testimony of John B. Catlin.)

convert the standing trees into logs, and after he has done that, sell the logs to a company; can't he do that?

A. I see nothing to hinder it; I would say that he could, yes, sir.

Q. So when you said that there was nothing that he could do except to sell the land you were mistaken, are you not?

A. I might have been mistaken as to the fact that there was nothing else for them to do with it, but then as far as the question of their building a sawmill and undertaking to cut that small amount of timber that they would get off of 160 acres, why the idea would be absurd.

Q. On your theory it would be for purely speculative purposes that the entries would be made?

Mr. WALSH.—Objected to as immaterial, irrelevant and incompetent, and calling for an opinion on a question of law from the witness, and not proper cross-examination.

A. I don't know as to that.

Q. You did not pay Mr. Griswold anything for locating you, did you?

A. Not that I recollect of, no, sir.

Q. Not that you recollect of—you know you didn't, do you not?

A. Well, yes, I know I didn't.

Q. Why didn't you say so in the first place?

A. I considered the answer that I made equivalent to saying that I did not.

(Testimony of John B. Catlin.)

Q. Now, then, counsel referred to your swearing to certain pleas in abatement, Mr. Catlin, in which you charged that the Grand Jury were induced to return indictments against you by reason of certain conduct on my part as the representative of the Government. Now, were you present at any session of the Grand Jury? A. I was not.

Mr. BICKFORD.—I want to interpose an objection to the premise to that question, that I understood to this effect, that the witness swore to certain pleas in abatement filed to the indictment against the witness in the United States Court, when there is nothing in the record or the evidence to show that the witness now upon the stand ever swore to any pleas in abatement or anybody else.

Mr. MAYNARD.—I will say in reply to my brother on the other side that all of the records under the stipulation in the case have been introduced in evidence in this case, and that the pleas in abatement are sworn pleas, sworn to by those who were indicted.

Mr. WALSH.—The objection was to your statement to the witness that he had testified that he swore to pleas in abatement.

Q. Well, you were called upon by counsel to swear to certain pleas in abatement, were you not?

A. I believe I was, yes, sir.

Q. And as to conduct of mine among other things that took place before the Grand Jury?

(Testimony of John B. Catlin.)

A. I could not say as to that.

Q. And you say that you were not present at any session of the Grand Jury? A. I was not.

Q. Very well. If you had no knowledge as to what took place before the Grand Jury, how did you come to swear to certain facts?

Mr. WALSH.—Objected to as utterly irrelevant and immaterial and not proper cross-examination.

Q. (Continued.) As to what took place before the Grand Jury?

Mr. BICKFORD.—And for the further reason that pleas in abatement and other pleas in the courts of Montana may be sworn to by the parties on information and belief; and it is a practice recognized by the law and by the court in this State.

Q. (Continuing.) In other words, to swear positively about certain things that you knew nothing about?

A. I employed an attorney, and these matters that came up there were recited to me, and I signed my plea in abatement.

Q. In other words, you swore to a paper that they drew up without knowing anything about it?

Mr. WALSH.—The same objection.

A. I did not know anything—I had no personal knowledge of it, no, sir. As I was not present, I could not have.

Q. Now, you said in reply to counsel that you knew

(Testimony of John B. Catlin.)

of a large amount of operations substantially that your employer, Mr. Cobban & Dinsmore, engaged in during that year other than under the Stone and Timber Act?

A. Yes, sir.

Q. Well, now you knew of a good many that were done under the Stone and Timber Act, did you not, that are not embraced in the matter that is now under inquiry?

A. Well, I don't know now how many there are under inquiry, and I have no knowledge about the number of these applicants whatever; they would come in; work would go right on and they would come in, two or three applicants in one day and two or three might come in a week from that time, just as they happened, and I kept no record of them.

Q. The $18,000 or thereabouts that Cobban received from Mrs. Largey, was all for entries that were made under the Stone and Timber Act, was it not?

Mr. WALSH.—We object because the witness has not testified anything about Mrs. Largey's purchase, and it is not proper cross-examination and is irrelevant and immaterial.

Mr. MAYNARD.—Mr. Noon did swear to the matter yesterday that he paid $18,000.00 in cash for public land that were taken up under the Stone and Timber Act.

Mr. WALSH.—I object that it is not proper cross-examination.

(Testimony of John B. Catlin.)

Mr. MAYNARD.—On redirect you asked this witness if he did not know of other operations that Cobban was engaged in, and now I want to know if it is not competent for me to inquire as to that?

A. I knew nothing whatever of the $18,000 that Mr. Cobban received from the Largey estate, and never heard of that until I heard Mr. Noon mention it as I was sitting here as a witness in the courtroom yesterday.

Q. You knew nothing about the way in which Mr. Cobban got that land?

A. I did not say so; I said that I did not know anything about this money.

Q. Did you know about the way that Mr. Cobban got that land?

A. I know he got some land there under the Timber and Stone Act and I think some under the Preemption Act and some under the Homestead Act.

Q. Was not the land that was acquired under the Stone and Timber Act there substantially the same as the land acquired under the Stone and Timber Act in this case?

Mr. WALSH.—The same objection.

A. I think so.

Q. And you drew the filings for those entrymen and entrywomen?

A. I presume I did in some instances.

Q. And you knew of land that was taken up under

(Testimony of John B. Catlin.)

the Stone and Timber Act in the Blackfoot country under the Morris contract, did you not?

A. Under the Morris contract?

Q. Yes, a man by the name of Morris that was working for Mr. Cobban under a contract substantially the same as Griswold had made with him?

A. I recollect seeing Mr. Morris about the office, and I supposed he was working under Mr. Griswold. I knew nothing about his being employed subsequently. I may have made some applications that he brought in, I could not say; I presume I did.

Q. So, as a matter of fact, in taking into consideration the number of entries that you made, it is true that the Government has got into such a very small fraction of the work of Mr. Cobban under the Stone and Timber Act?

Mr. WALSH.—One moment. You need not answer that Major; we object to it as not proper cross-examination. Put down my affirmation to the witness.

Q. Do you decline to answer, sir?

Mr. WALSH.—Do not answer that either, Major; you can put that down.

The EXAMINER.—Let the witness say I decline to answer or to that effect; I prefer to have the witness state whether he wishes to answer.

Mr. MAYNARD.—I want the witness to go on record.

(Testimony of John B. Catlin.)

The WITNESS.—I decline to answer, sir.

Q. Very well, sir, I thought you would.

Mr. WALSH.—Put down the remark of counsel.

Q. Now, then, you say that you knew Mr. McLaughlin?

A. I have known Mr. McLaughlin for a number of years, yes, sir.

Q. Counsel refers to your not knowing anything about the defendant's connection with these lands and that these lands were bought for the defendant. You knew Mr. McLaughlin was working for Mr. Clark at the time, did you not?

A. I knew that Mr. McLaughlin was engaged in—I would say in the sawmill business, but I did not know that he was employed by Mr. Clark, but I had reasons to believe that he was, but I did not know it.

Q. You knew Mr. Sparks, too, did you not?

A. Yes, sir.

Q. You knew that Mr. Sparks was working for Mr. McLaughlin?

A. Well, yes, I can say that I did know that he was working for Mr. McLaughlin.

Q. And you knew that Mr. Sparks' operation and working that time was up in the Blackfoot country, did you not?

A. I do not recollect his being in the Blackfoot country; I thought he was below, in the vicinity of the country that Mr. McLaughlin was running a sawmill in.

(Testimony of John B. Catlin.)

Q. You knew Mr. Henley, did you not?

A. Yes, Jim Henley.

Q. And Mr. Henley was making estimates for Mr. Cobban on this timber, was he not?

A. He was.

Q. And Mr. Sparks was going along, making estimates at the same time of this idential timber?

A. I know nothing about that.

Q. Hired by Mr. McLaughlin, who, as you say, you had reason to believe was working for the defendant in this case?

A. I do not know that Mr. Sparks was doing anything of the kind, because I was not very well acquainted with Mr. Sparks and I thought his operations were with Mr. McLaughlin down on the Missoula river below.

Q. But as to the facts you are not positive?

A. I am not positive; I say I don't know.

Redirect Examination.

(By Mr. WALSH.)

Q. Do you know anything about the facts and circumstances under which Mr. Cobban acquired title to the lands conveyed to Mrs. Largey?

A. I do not.

Q. Are you able to tell us now whether Mr. Cobban did or did not loan a dollar to anybody who took up the land which he subsequently conveyed to Mrs. Largey?

(Testimony of John B. Catlin.)

A. I do not know that he did.

Q. And as to whether they were taken—whether Mr. Cobban acquired under the same conditions and circumstances as the lands in controversy in this action, what have you to say?

A. I have no knowledge of it.

Q. And what knowledge have you as to whether Mr. Morris was working under a contract substantially the same as the contract under which Mr. Griswold was working?

A. I never knew anything about that and never heard it mentioned until I heard it here to-day in this courtroom.

Q. You told us that your understanding was that Mr. McLaughlin was working up the Missoula river somewhere?

A. Mr. McLaughlin has been engaged in the lumber business to the best of my knowledge down below Missoula on the Missoula river somewhere, and whether he is at Lothrop or where he was I could not say as I have never had any business with him and have never visited that section since they went into it.

Q. And it is in connection with that business that you state that you had reason to believe he was connected in some way with Senator Clark.

Mr. MAYNARD.—Objected to as leading and as entirely incompetent for counsel to put such a question under the circumstances to this witness.

(Testimony of John B. Catlin.)

Q. You may state, Major.

Mr. MAYNARD.—The witness has already stated that he doesn't know anything about it, and I am going to move to have this whole matter stricken out as far as this examination of yours is concerned?

Mr. WALSH.—Well, it ought to have been.

Mr. MAYNARD.—On this redirect examination.

The WITNESS.—My reasons for believing that he was connected—

Q. No, I did not ask you that, I want to know what business it was that you had reason to believe Senator Clark and Mr. McLaughlin were associated in?

Mr. MAYNARD.—I object to the question and ask that the witness be permitted to answer the question as he had started, in which he said "My reasons for believing that Mr. McLoughlin was working for Mr. Clark were—"

A. I had heard that they were associated in the lumber business there, or that Mr. McLoughlin had charge of a mill belonging to Mr. Clark.

Q. Where?

A. Down below Missoula on the river, and I could not say in what camp.

Q. What did you know about Mr. McLoughlin and Senator Clark being associated together in connection with any timber of the Blackfoot river?

(Testimony of Ernest R. Kilburn.)

A. I knew nothing of it whatever.

(Witness excused.)

JOHN B. CATLIN,

Subscribed and sworn to before me this 24th day of April, 1902.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

Thursday, April 24th, 1902, ten o'clock A. M.

Hearing was resumed pursuant to adjournment.

ERNEST R. KILBURN, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. BICKFORD.)

Q. Your name, I believe, is Ernest R. Kilburn?

A. Yes, sir.

Q. Commonly called the Deacon.

A. Abbreviated, yes, sir.

Q. Where do you now live, Mr. Kilburn?

A. My family lives in Missoula; that would be my home.

Q. And what is you business or occupation?

A. At the present time I have charge of a sawmill, for the Largey Lumber Company.

Q. At what point?

A. My business is at Woodside, Montana.

Q. And how long have you lived in Montana, Mr. Kilburn? A. Since '83—since '84. Yes, '84.

(Testimony of Ernest R. Kilburn.)

Q. What has been your business or occupation since coming to Montana?

A. Since 1885 I have been in the lumber business.

Q. At what point have you been engaged in the lumber business during most of this time?

A. On the Blackfoot river.

Q. Connected with what lumber concern?

A. The Big Blackfoot Milling Company.

Q. Where did you live when you were upon the Blackfoot river?

A. At a place called Ovando, in Deer Lodge County.

Q. What was the scope of your employment with the Big Blackfoot Milling Company?

A. I was first employed as a timber scaler.

Q. And you logged in what capacity?

A. And logged as a contractor, a logger, a logging contractor for the company.

Q. You are very well acquainted with the Blackfoot country genrally, aren't you? A. Yes, sir.

Q. Have you ever had any experience in cruising timber to ascertain or estimate the amount of timber upon land? A. Yes, sir,

Q. Where were you living in the summer of 1899?

A. I was living in the Blackfoot valley.

Q. At what point? A. At Ovando.

Q. I will ask you to state whether you had anything to do with the examination of any timber and stone claims during that summer? A. Yes, sir, I did.

(Testimony of Ernest R. Kilburn.)

Q. At whose instance did you make such examination?

A. In January—or in July, 1899, I met Mr. Griswold at Clearwater. He asked me if I would go and estimate some claims on Camas Prairie—the postoffice is at Potomac, and I agreed to do so.

Q. Well, what did you do in pursuance of that conversation?

A. I went to Camas Prairie—I went down and made an examination of the timber, on some timber claims which he gave me the description of at Potomac.

Q. Do you remember what claims they were, Mr. Kilburn? A. Yes, sir.

Q. Well, will you please give them to us?

A. There was a hundred and sixty acres belonging to John Beaton, and one hundred and sixty acres owned by Charles Gilbert, and a hundred and sixty acres belonging to George Elliot, and a small piece of timber land belonging to H. A. Amiraux, and there was three stone and timber claims; I don't believe I knew who the locators of the timber claims were.

Q. Now, of the claims you have mentioned, I will ask you to state what the condition of the land was with reference to the title thereto, at the time when you made the examination.

A. Beaton's claim was a pre-emption. I don't know when he filed or proved up on it, but I know he had lived on it prior to my going to the Blackfoot valley in 1885.

(Testimony of Ernest R. Kilburn.)

Q. Go on with the rest, Mr. Kilburn?

A. Gilbert's was a homestead. I don't know how long he had lived on it; I know he proved up on the claim, at least he told me so. The Elliott claim was a homestead, and he had proved up on it. The Amiraux claim, also, or whatever timber was on his homestead—it was a homestead, and he had made final proof on it.

Q. What about Charles Gilbert's claim?

A. His was a homestead.

Q. Charles Gilbert't claim was a homestead?

A. Yes, sir.

Q. And final proof had been made thereon?

A. He told me so, yes.

Q. And how about the timber and stone claim?

A. The timber and stone claims, I don't know whether the proof had been made on them or not; I didn't ask any questions about that.

Q. Did you, as a matter of fact, make an examination of these claims and estimate the amount of timber that was growing thereon? A. I did, yes, sir.

Q. And to whom did you make out your report as to the amount of timber that was on these claims?

A. I made out those estimates and gave them to Mr. Griswold.

Q. Was that the only occupation or employment you had with Mr. Griswold that summer?

A. No, sir, some time after this, probably about four weeks, I think it was, in the month of August, my wife was stopping with her mother at Potomac, and I was—

(Testimony of Ernest R. Kilburn.)

this was on Sunday—and there was a man by the name of Albert Jemison rode up to the house, and he had a letter for me from Mr. Griswold, and in that letter Mr. Griswold asked me if I would go down to Belmont, or what I call Nine Mile Prairie, and examine some timber lands that this Mr. Jemison claimed to have there.

Q. Well, what did you do with reference to that?

A. I went with him, went with Jemison down to his father's place.

Q. And where was his father's place?

A. At the foot of Nine Mile. He had a ranch there belonging to Hiram Blanchard.

Q. I will ask you what you did there, Mr. Kilburn?

A. We got there Sunday morning, and started out to examine these timber claims.

Q. How long did it take you, Mr. Kilburn?

A. Five days; I put in five days examining this timber land.

Q. At the expiration of that time, what did you do with reference to making a report upon it, if anything?

A. I finished up the examination on Friday evening, and on Saturday morning I drove to Clearwater, and from there I went to Ovando, and I met Mr. Griswold at Ovando, on the same day.

Q. And what time of the year was this, Mr. Kilburn?

A. This was in August, 1899.

Q. And you made your report to him verbally, as I understand you?

A. I didn't make any report to him at all. I told

(Testimony of Ernest R. Kilburn.)

him the claims were all right as far as the amount of timber on them was concerned.

Q. And that was the extent of your examination?

A. Of them claims, yes, sir.

Q. Now, what have you to say with reference to there being any knowledge on your part as to the condition of these claims, with reference to the title thereto, as to who owned them, or whether they were owned by anyone or by the Government?

A. Oh, at the time I think that they were owned by the Government.

Q. They were owned by the Government at that time? A. Yes, sir.

Q. Do you know about any one making entries on these timber claims or any of them?

A. I think I do, yes, sir.

Q. Well, state who it was, if you know?

A. There was a man there by the name of Son Jemison; that is all I know about it, that is what they called him "Son." I don't know what his right name is—and Thomas Roll, and his daughter. Mrs. Eddy, Mrs. William Eddy, Jim Mize and his wife, and a man by the name of Yarger. The other man, I have forgotten his name.

Q. You know that these people subsequently made a timber and stone entry on the claims that you examined at Nine Mile Prairie, do you not? A. Yes, sir.

A. Now, I will ask you to state if you ever had any

(Testimony of Ernest R. Kilburn.)

conversation with any of these people who made timber and stone entries upon these claims.

A. No, sir, I did not.

Q. What have you to say as to their being any contract or agreement with reference to these people, that they would sell their locations after they had made final proof upon them?

A. I never heard anything of the kind.

Q. They made no such contract or agreement with you? A. No, sir, they did not.

Q. So that the nature of your employment—what was the nature of your employment for Mr. Griswold?

A. From that time on I stayed in his employment until some time in December, I think. I didn't stay in his employment altogether, sometimes I would be busy on other business, and my time would be counted then.

Q. What was your business or employment, what did you do for Mr. Griswold?

A. From that time on I examined unsurveyed land mostly.

Q. To whom did you report upon this unsurveyed land, if at all?

A. I generally made out my report and sent it in to Mr. Cobban's office in Missoula.

Q. Did you know the purpose of making the examination of the unsurveyed land? A. Yes, sir.

Q. What was it?

A. For the purpose of placing scrip on it.

(Testimony of Ernest R. Kilburn.)

Q. That is what is usually know as lieu land selections, isn't it?

A. Yes, sir, lieu land selections.

Q. You were employed in that business, as I understand you, by Mr. Griswold?

A. Yes, sir, on the Blackfoot.

Q. Now, with reference to your employment by Mr. Cobban, were you at any time during the summer or fall of 1899, employed by Mr. Cobban in this business?

A. Yes, sir.

Q. Will you please state what that employment was and how long it continued, and what you did thereunder?

A. I examined some timber land in the Bitterroot valley for Mr. Cobban.

Q. Is that all?

A. That was all that I—in 1899—in January, 1900, I made several trips up the Blackfoot for Mr. Cobban, looking after the notices posted on scrip land.

Q. Yes. Now, did you ever locate anybody upon a timber and stone claim?

A. I showed three parties timber and stone claims.

Q. Who were those parties?

A. Mrs. Catlin, Miss Wright and my wife.

Q. At whose request did you locate these people upon timber and stone claims?

A. The evening that Mr. Catlin, his wife and Miss Wright arrived at the mouth of the Clearwater, at Griswold's stopping place—it was known as Gris-

(Testimony of Ernest R. Kilburn.)

wold's stopping place—I happened to come along there that same evening, and the next morning Mr. Griswold asked me to go up and show these people the timber claims, and I went with them and hunted up the claims, and seen that they were properly located, and that the ladies made an examination of the land, and also of the timber, and the character and conditions thereon.

Q. Then it was at the request of Mr. Griswold that you made these locations? A. Yes, sir.

Q. And showed the people where the land was?

A. Yes, sir.

Q. At the time when you made this trip to locate these people upon the land, did you make any contract or agreement with them with reference to the selling of the land? A. No, sir.

Q. Did you ever hear of any contract?

A. No, sir.

Q. Did you ever make any contract or agreement with anybody with reference to the sale of the timber lands, after they had acquired title from the Government of the United States?

A. I never did make any agreement after they had acquired title, except my wife, and I talked to her with regard to her claim, after she had proven up.

Q. Well, what have you to say as to your being instructed by Mr. Cobban or anybody else, that he would furnish them with the expense money to make their entry, and filing, and the expenses of the advertising

(Testimony of Ernest R. Kilburn.)

and final proof, and the cost of the land, and would pay them a hundred dollars over and above their expenses for the land, after they had proven up upon it?

A. Well, in regards to Mr. Cobban, after I became acquainted with him, people knew that I was estimating timber and was in that kind of business, and I had lots of parties come to me to know if I could sell their timber claims to Mr. Cobban, and I went to Mr. Cobban, in one instance, and told him that somebody wanted to sell. He asked me if they made final proof, and I said, "No," and he said, "No, not under any consideration will I have anything to do with them until they have proved up on the land." He said, "Don't make any price on the land; I don't want you to make any price or any bargain, or any agreement with anybody until after they have had title to their land."

Q. You knew he was in the market buying timber lands at this same time, did you not?

A. Yes, sir; that was his business.

Q. When abouts in the summer was this conversation that you have just related?

A. Well, in the month of September and October. He charged me several times never to make any bargain or price before they had proved up.

Q. I will ask you if you ever overheard any conversation between Mr. Cobban and Mr. Griswold with reference to this matter?

A. No, sir; I never did, but I have traveled up and down the river with Mr. Griswold a great deal during

(Testimony of Ernest R. Kilburn.)

these times, and Mr. Griswold never told me that he had any right or authorized me to go ahead to make any price prior to their making final proof upon their claims.

Q. And, as a matter of fact, you never did make any contracts or agreements with anybody, did you?

A. No, sir.

Q. Do you know a man by the name of Ambrose Martin? A. Yes, sir.

Q. Do you know who located Ambrose Martin upon a timber and stone claim, if anybody?

A. I do not.

Q. Did you go with Ambrose Martin for the purpose of locating him upon his timber and stone claim?

A. Not to my recollection.

Q. At the time when you located Mrs. Catlin and Mrs. West upon their claims, were you in the employ of Mr. Griswold at that time?

A. Mr. Griswold, do you mean?

Q. Griswold, I should say, A. Yes, sir.

Q. And you went with them at his request?

A. Yes, sir.

Q. Did you ever at any time make a timber and stone entry yourself, Mr. Kilburn? A. Yes, sir.

Q. When was that?

A. When the Timber and Stone Act became a law—that act became a law in Montana—I took up a claim that fall, I think it was, in 1892. I know it was the first year that the law went into effect in Montana.

Q. And what did you do with that claim subsequent?

(Testimony of Ernest R. Kilburn.)

A. I sold it.

Q. You didn't sell your claim to Mr. Cobban, did you? A. No, sir.

Q. Now with reference to—you testified, I believe, that you showed your wife a timber and stone claim?

A. Yes, sir.

Q. I will ask you to state whether you are well acquainted with the facts and circumstances concerning her making a timber and stone entry?

A. Yes, sir; I am.

Q. Did you know all the facts and circumstances connected with it? A. Yes, sir.

Q. I will ask you to state whether your wife, at the time she made her stone and timber entry, had made any bargain or contract to sell her claim?

A. I don't think she ever had.

Q. Did you go with her to the land office, Mr. Kilburn? A. Yes, sir.

Q. At the time of her making final proof?

A. Both when she made her application to file and when she made her final proof—at both times.

Q. At the time when she made her final proof had she made any contract or agreement to sell the land to any person? A. No, sir.

Q. Or for any person other than herself—did any person other than herself have any interest in the land?

A. No, sir.

Q. That is, the money—the money that she paid for

(Testimony of Ernest R. Kilburn.)

the land, that is for making her final proof on the land, whose money was it? A. It was her own money.

Q. At the time when she sold her land, I will ask you to state whether you took any part in the sale of the land for her or with her?

A. Nothing more than I advised her.

Q. You advised her as to the value of the land?

A. Yes, sir.

Q. Now, it has been testified to here by Griswold, and the question is: "I will ask you, Mr. Griswold, what instructions you have to Mr. Kilburn? A. I instructed Mr. Kilburn to go on and locate these different people, with the understanding that Mr. Cobban, with whom I was acting as agent, would defray their expenses for filing on the land, and to pay into the land office the fee and the two dollars and fifty cents per acre, for the purchase price of the land, and then they would transfer this land to Mr. Cobban, or whom he might elect. Under those instructions, I put Mr. Kilburn to work." When did you receive those instructions from Mr. Griswold, Mr. Kilburn? A. I never did.

Q. You state, then, that that testimony of Mr. Griswould with reference to giving you instructions of that kind, is erroneous? A. Yes, sir; that was.

Q. When did you first hear about this sort of a claim upon the part of Mr. Griswold?

A. About him giving me them kind of instructions?

Q. Yes, sir; that he had so instructed you.

A. When did I first hear about it?

(Testimony of Ernest R. Kilburn.)

Q. When did you first hear that Mr. Griswold claimed to have given you such instructions as that?

A. I never heard it unless I heard it right here.

Q. That is the first you ever heard of it, then?

A. I have seen some of the testimony in Helena; I heard it over there while it was in Helena—while I was there.

Q. Then, Mr. Griswold is mistaken about having given you such instructions?

A. Yes, sir; he is.

Q. Then you say that Mr. Griswold did not give you the instructions which he testified to? A. No, sir.

Q. What instructions, then, did he give you with reference to the matter?

A. My instructions were to examine forties, quarter sections, and subdivide them into forties; any forties that would have two hundred thousand feet or more of timber on it, I should report it as good; and any claims of a hundred and sixty acres of surveyed land that was open for filing that would estimate seven hundred thousand or eight hundred thousand feet or more, I should report that also as good. Now, that was my instructions; also, if I run across any timber that was located and was in the market for sale; that is, owned by the applicant, I should also report that to the office. They were in the business of buying timber lands then.

Q. What, if any, instructions did he give you with reference to making a bargain with these people?

(Testimony of Ernest R. Kilburn.)

A. Never gave me any. I had no authority to make bargains.

Q. Didn't he tell you to make agreements with these people that were located upon land, if you could?

A. No, sir.

Q. Well, did he tell you the opposite of that; did he tell you not to make any bargain or agreement?

A. I always reported anything I found to them, to see if they wanted to locate the right. If they wanted to go ahead and locate, all right; as far as I was concerned.

Q. Do you know L. A. Wells, and his wife, Lizzie Wells, who are living near Woodworth?

A. Yes, sir.

Q. How long have you known them?

A. Since 1887.

Q. Did you ever make any examination of any timber and stone claim belonging to him, or his wife, Lizzie Wells?

A. I never made an examination for Griswold of L. A. Wells' claim, but I was well acquainted with the L. A. Wells' claim.

Q. Did you ever, at the request of L. A. Wells, or his wife, go upon that claim with the express purpose of making an examination of it, and reporting to Wells and his wife? A. I did not.

Q. Did ever Wells ask you to go upon the claim for that purpose?

A. He might have; he didn't ask me to go upon the

(Testimony of Ernest R. Kilburn.)

claim for him for any purpose, but he asked me if I was acquainted with the claim, and I told him I was, and he probably wanted to know how much timber there was on it, and I probably gave him an estimate as to how much timber there was on it.

Q. But the estimate which you gave her wasn't such an estimate as you would have given if you had gone onto the claim with that express purpose?

A. No, I only gave him a general idea, that is all,

Q. How did the claim of Mrs. Wells—did you make an examination of that claim expressly for the purpose of making an estimate of it—of the timber on it?

A. I never remember of being on Mrs. Wells' claim; if I ever was on it, I didn't know it.

Q. On page 223, Griswold is asked this question, after stating that he had hired you under his contract with Cobban, as follows: "State as to whether or not you communicated to each and every one of these assistants, just as specific an agreement and arrangement as you had with Mr. Cobban? A. Yes, sir, I did." I will ask you now whether or not in anything Griswold ever said to you, whether he said to you anything with reference to his agreement or arrangement with Mr. Cobban?

A. I never knew of any arrangement or bargain, Mr. Griswold had with Mr. Cobban. I understood from Mr. Griswold that he was to receive five cents a thousand for all the lands he located in a certain district in the Blackfoot valley.

(Testimony of Ernest R. Kilburn.)

Q. Was there ever anything said about procuring people to make entries of these lands?

A. No, sir; there was not.

Q. Was there anything ever said about hiring them and paying them a hundred dollars for the land over and above their expenses? A. No, sir.

Q. And have you detailed all the conversation—all the knowledge that you had with reference to the contract between Mr. Cobban and Mr. Griswold?

A. I have; yes, sir.

Q. Do you know one David Morris?

A. Yes, sir.

Q. How long have you known him?

A. About thirteen years.

Q. Do you know anything about his having been employed during the summer of 1899 by R. M. Cobban?

A. Yes, sir.

Q. Do you know anything about the scope of his employment, or what he was doing?

A. He was estimating timber for Mr. Cobban.

Q. Do you know anything further about his employment than that? A. No, sir.

Q. You said you had known Griswold how long?

A. Ever since he came to the State of Montana; since 1893.

Q. Do you know his reputation in the neighborhood in which he has lived for truth, honesty, and integrity?

A. Yes, sir.

Q. Is it good or bad?

(Testimony of Ernest R. Kilburn.)

A. There were some periods that it was considered good, and there were other periods that it was considered very bad.

Q. Do you know L. A. Wells? I believe you said that you did? A. Yes, sir; I do.

Q. How long have you known him, Mr. Kilburn?

A. Since 1887.

Q. Do you know his reputation for truth and veracity in the community in which he lives?

A. Yes, sir.

Q. Is it good or bad?

A. Well, I should say it was bad.

Cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Kilburn you say that you were in the employ of Mr. Griswold, the gentleman who is sitting here by my side?

A. I am acquainted with him, yes, sir.

Q. From about the first of July, 1899, to some time in December, 1899?

A. From the middle of July.

Q. From the middle of July, 1899, to what time in December?

A. Probably the first of December.

Q. Did he solicit your services, or did you ask him to employ you?

A. I might possibly have asked Griswold to employ me. I know this particular occasion, when I went down to Camas Prairie, estimating the timber there,

(Testimony of Ernest R. Kilburn.)

that Mr. Griswold asked me to go down there, and it took ten days to do that work. Some time in August I met Mr. Griswold at Bonner, and he says, "If you will ride down to Missoula, I will see that you get your money; and I went with him and went into Cobban & Dinsmore's office and he told Mr. Dinsmore that I had been ten days estimating timber for them, at the rate of five dollars a day, and Mr. Dinsmore wrote me out a check for fifty dollars.

Q. Well, that service that you performed was during the time that you were in the employ of Mr. Griswold, was it not?

A. Mr. Griswold authorized me to go down there and do that work, and I did so.

Q. Well, he directed you to go, did he?

A. Yes, sir.

Q. Now, when you say that you might have asked him to enter into his employ about the middle of July, the time that you commenced, don't you know that you did?

A. Why, it is no harm, is it, to ask a man to give you work.

Q. Why, no, there is not; I am simply asking you for the fact?

A. Well, I say I may have asked him, but I wouldn't swear that I asked him; I may have asked him and I may not have asked him; that is a very simple thing, and I wouldn't keep my memory refreshed on a little thing like that.

(Testimony of Ernest R. Kilburn.)

Q. So that you don't now have a clear recollection as to the circumstances which led up to the employment which Mr. Griswold gave you?

A. Well, we will go back a little further, in the month of May, when I had charge of a part of a drive on the Big Blackfoot river that was on the Clearwater, between Salmon lake and Seely lake. One day in the afternoon Mr. Griswold rode up there and he called me on one side and he says: "I have entered into a contract with Mr. Cobban to locate timber lands for him." He says; "If you would like to go to work for me, you can go ahead any day you want to." That is the first time that I ever heard of him locating timber or of Cobban's buying timber up in the Blackfoot country, and Mr. Griswold came to me and offered to hire me to go to work for him, and I did work for him during the time I have mentioned. Possibly in July, I may have asked him if I could go to work for him. The propriety of the thing is so small, that I don't think that I would be apt to put it down in a book, or to try to remember that part of the conversation.

Q. Well, he told you he would give you five dollars a day and you pay your own expenses, did he not?

A. Yes, sir.

Q. And that was the compensation which you received from him during the period of your service for him?

A. I always got five dollars a day for every day I turned in.

(Testimony of Ernest R. Kilburn.)

Q. And you got all your pay from Mr. Griswold that was due to you from him?

A. After this work that I done on Camas Prairie in July. I believe that Mr. Griswold paid me when I worked for him.

Q. Now, so far as this work is concerned that you did for Mr. Griswold at Camas Prairie, aren't you mistaken in regard to this fifty dollars being paid by Mr. Dinsmore?

A. Mr. Dinsmore wrote the check out and I am not mistaken on going in and introducing me to Mr. Dinsmore, and saying that Mr. Kilburn was estimating some timber up on Camas Prairie, that there was due him fifty dollars, and Mr. Dinsmore then sat down and wrote out the check. That is the first money that I ever got.

Q. Well, now, as a matter of fact, didn't Mr. Griswold pay you fifty dollars in currency at Clearwater, on the completion of that service?

A. No, sir, he did not.

Q. And didn't he receive your receipt for it?

A. No, sir, he did not, not at Clearwater. He paid me when I was with them, paid me in Cobban & Dinsmore's office.

Q. Well, you never did but one piece of work for Mr. Griswold on this Camas Prairie deal, did you?

A. After this Mr. Griswold and I looked at some timber on Camas Prairie, unsurveyed land. Whether Griswold went over there with me or not, I won't say, but he sent me over there to look at this land.

(Testimony of Ernest R. Kilburn.)

Q. That is the second Camas Prairie deal, is it?

A. That is the second time I went to look at some land on Camas Prairie.

Q. Did he pay you fifty dollars then, Mr. Kilburn?

A. No, sir, I don't remember that he did.

Q. Did he pay you fifty dollars then for that service?

A. No, sir, not right at that time; when I wanted some money, I told him so, and he gave me the money.

Q. Well, do you remember of his paying you the sum of fifty dollars at Clearwater, and your giving him a receipt for that amount?

A. I don't remember.

Q. You don't remember that?

A. He might have paid me fifty dollars some time at Clearwater, but in this instance, for estimating this timber at Camas Prairie, I say that Mr. Dinsmore wrote that check out for me and gave it to me in his office in Missoula.

Q. When was that payment made, Mr. Kilburn?

A. Sometime in the month of August.

Q. In Missoula? A. Yes, sir.

Q. Now, then, tell me again just what the nature of your work was for Mr. Griswold, from July to December?

A. Start right in from the beginning, do you want me to?

Q. I want you to tell me specifically what you did for him?

(Testimony of Ernest R. Kilburn.)

A. Well, after going up there and estimating that timber on Camas Prairie, I didn't do any work for him.

Q. Then wait a minute. I want to inquire into that Camas Prairie matter. What did you say you did down there? A. I estimated some timber.

Q. And was that on surveyed Government land or unsurveyed Government land?

A. It was surveyed; most of it was patented land.

Q. Patented land, did you say? A. Yes, sir.

Q. How long a time did that take you?

A. Ten days.

Q. That would be five dollars a day, and that would be fifty dollars, wouldn't it? A. Yes, sir.

Q. And you made the report of the amount of timber to Mr. Griswold, did you?

A. Yes, sir, I made my report out on a piece of paper and turned it over to Mr, Griswold.

Q. As to the amount of timber that was growing on that amount of land? A. Yes, sir.

Q. Do you know for what purpose you made this—you did this work?

A. Those parties owned that land down there—owning that timber, wanted to sell it. I was sent there to ascertain how much timber there was on the ground. You generally buy timber lands by the thousand, and whenever a person goes to buy it, they have to estimate how many thousand there is on the one hundred and sixty acres.

(Testimony of Ernest R. Kilburn.)

Q. And that was all that you know about the matter? A. That is all I knew about it, yes, sir.

Q. And this was in July, you say?

A. Yes, sir.

Q. Was that the first work you did for him after entering into Mr. Griswold's employ? A. Yes, sir.

Q. And you say this payment of fifty dollars was in August, 1899, that is, that you got from Mr. Dinsmore?

A. Well, that is as near as I can recollect the month, that is, that it was the month of August.

Q. Can you name the date in August?

A. Oh, no, I cannot name the exact date in August.

Q. I show the witness Complainant's Exhibit "C." This is the account of Mr. Chauncey Griswold, "In account with R. M. Cobban." You see that, don't you?

A. Yes, sir, I see it.

Q. Now, there is, I show you this line—August 11th, by cash paid Kilburn, fifty dollars?

A. Well, what of that?

Q. You see that item, do you not?

A. Yes, I guess I must have got fifty dollars.

Q. Now that is correct? That is expended by Mr. Griswold for Mr. Cobban, is it not?

A. I suppose they credited—I don't know how they entered that fifty dollars. They paid me on the check, I don't know anything about that.

Q. Now, don't you know that this is correct, and that this credit as it appears here in this exhibit, was by reason of a receipt that you signed and gave to Mr.

(Testimony of Ernest R. Kilburn.)

Griswold for this fifty dollars, at Clearwater, for these services, and which you turned in to Cobban & Dinsmore and on the strength of that receipt that you turned in, the credit was given him?

A. No, sir, I don't know anything about that bill.

Q. And the date here, "August 11th, 1899," at the time in the month that you say you received the money?

By Mr. WALSH.—Wait a minute, Mr. Kilburn; there is no question.

Q. This paper speaks for itself?

By Mr. WALSH.—We move to strike out the statement of the counsel, for the reason that it is not a question propounding to the witness.

Q. Now, then, you say that Mr. Griswold, before this time, before you entered into his employ, way back in May, had told you of the contract that he had entered into with Mr. Cobban?

A. Well, he might—the agreement or contract that he had to locate timber; he didn't tell me what the conditions of the contract were at all, or go into details in the matter. He says, "I have a contract or agreement, or whatever you might call it, to locate timber lands."

Q. In May 1899, was that?

A. Well, I think it was in May, 1899; I know it was the latter part of May, 1899; I know that we were driving on the stream, and I guess that was the time of the year.

(Testimony of Ernest R. Kilburn.)

Q. And what he was to do under that contract, he didn't tell you and you don't recollect in anyway?.

A. Oh, I know he was locating, or looking up timber land; he told me that much; he told me that he wanted to look up timber lands.

Q. For Mr. Cobban?

A. Well, yes, I believe it was for Mr. Cobban. I don't remember of Griswold telling me how much the amount was. Now that I refresh my memory, I don't think he told me who the man was, or who the party was, but I think I asked him and he says, "It don't make any difference who the party is."

Q. Well, when did you first find out that it was Mr. Cobban?

A. Oh, after Mr. Cobban was going up and down the river and we had become acquainted with him and knew him.

Q. When did you first become acquainted with Mr. Cobban?

A. I think about the first of May, Mr. Cobban—along in August or September, sometime then; along about that time of the year somewhere.

Q. You had no dealings with him in August—or after you had entered into Mr. Griswold's employ?

A. I didn't meet Mr. Cobban until I had been in Mr. Cobban's employ—until after I had gone up to Camas Prairie to estimate the timber up there, as I have already related.

Q. You met him frequently, then during the rest of the summer and fall? A. Yes, sir, I did.

(Testimony of Ernest R. Kilburn.)

Q. Whereabouts did you meet him?

A. In Missoula.

Q. And where at?

A. Wherever I happened to run across him.

Q. Well, you entered into his direct employ later on in the fall, did you not? A. Yes, sir.

Q. And when down to Missoula and went to work in his Orchard Grove, did you not?

A. Yes, sir, I was employed by Mr. Cobban in the Orchard Home addition.

Q. For how long a time? A. For a year.

Q. When did you commence that work, Mr. Kilburn?

A. He hired me to look after that property in January, 1900, that is, we made an agreement that I should work for him for a year commencing the first day of January, 1900.

Q. And you did work for him from January, 1900, to January, 1901?

A. Yes, sir, I worked for him longer than that. I worked for him until July, 1901.

Q. Until July, 1901, did you say?

A. Until July 1st, 1901, yes, sir.

Q. So you worked for him immediately after leaving Mr. Griswold's employ, for one year and a half?

A. Yes, sir.

Q. And while you were so in his employ for a year and a half, the whole trouble about Mr. Griswold—the whole trouble between Mr. Griswold and Mr. Cobban commenced and continued and was ended, did it not?

(Testimony of Ernest R. Kilburn.)

A. I guess it commenced and continued; I don't know whether it is ended yet or not.

Q. Well, it was ended so far as the suit was concerned in the Missoula District Court, in which your employer, Mr. Cobban, paid Mr. Griswold fifteen hundred dollars?

By Mr. WALSH.—Has this man testified that he knows anything about what Mr. Cobban paid Mr. Griswold?

By the WITNESS.—No, sir.

By Mr. WALSH.—If he has not, we object to this question upon the ground that the witness cannot testify to anything that he doesn't know about Mr. Cobban paying Mr. Griswold fifteen hundred dollars in the suit referred to.

Q. You knew of the pendency of the suit, did you not?

A. Yes, I knew there was a suit.

Q. And you knew that it was discontinued?

A. I didn't know anything at all about what became of it.

Q. And you never heard?

A. No, sir, I did not; I wasn't in the city at the time.

Q. Where were you? A. I was in Idaho.

Q. And you were working for Mr. Cobban?

A. Yes, sir.

Q. You never was told by him, I suppose, that he hired you for a year and a half immediately after leav-

(Testimony of Ernest R. Kilburn.)

ing Mr. Griswold's employ, and kept you during the entire time of the pendency of the law suit, and discharged you immediately after it was settled, for the sole purpose of getting your support?

By Mr. WALSH.—We object to the question, for the reason that it is not proper cross-examination, and it is irrelevant, immaterial, and incompetent, and furthermore, that the declarations of Mr. Cobban at the time mentioned, long after the conveyance of the land mentioned, by Mr. Cobban to the defendant, Clark, are immaterial, irrelevant and incompetent.

Q. You never was told that?

A. Do you want me to answer that question?

Q. Yes, sir.

A. In the first place, Mr. Cobban never hired me for a year and a half.

By Mr. WALSH.—We will insist on his answering the question.

(Witness continuing.) And, in the next place, if he wanted me, he wouldn't have discharged me immediately after the case was dismissed; and if he had any lawsuit—I read the newspapers, and I saw that Mr. Cobban and Mr. Griswold were having a lawsuit in Missoula. It came in that way, but I knew nothing more than what I saw in the newspapers, and they stated that the case had been settled.

Q. But, as a matter of fact, he did hire you for one

(Testimony of Ernest R. Kilburn.)

year, almost immediately after you left the employment of Mr. Griswold?

A. I didn't leave the employment of Mr. Griswold. When Mr. Cobban asked me if I would work for him, I was still in the employ of Mr. Griswold.

Q. And you did enter his employ for a year?

A. I did, yes, sir.

Q. And at the end of that time, it was extended for six months?

By Mr. WALSH.—We object to that upon the ground that it is immaterial and irrelevant and not proper cross-examination.

A. It was extended for six months more, or, as long as I wanted to stay in his employ and he had work for me to do.

Q. But, as a matter of fact, you were discharged on the first of July, 1901?

A. I wasn't discharged, no, sir.

Q. And the suit came up in June, 1901?

A. No, sir, I was not discharged. I can go to work for Mr. Cobban whenever he has any work for me to do.

Q. Very well. In July, 1901, after you had been in his employ a year and six months, he told you he had no more work for you to do?

A. No, sir, he did not.

Q. Did you leave his employ voluntarily?

A. I did; I went to Mr. Cobban and told him I had

(Testimony of Ernest R. Kilburn.)

a better position that what he was giving me, and, that if it didn't make any difference to him, I would like to get off; and he told me if I could get a better position, it was my privilege to do so, and I entered the employ of the Largey Lumber Company, and I have been employed by them ever since.

Q. The Largey Lumber Company, or the Largey estate?

A. I said the Largey Lumber Company; I mean the Largey Lumber Company, a corporation organized and existing under the laws of this State.

Q. Is there such a corporation as the Largey Lumber Company? A. Yes, sir.

Q. Where does it do business?

A. They have two mills in the Bitterroot valley, and they have one at Coeur d'Alene City, Idaho, and numerous other small mills cutting for them on contract.

Q. And you swear that that corporation is known as the Largey Lumber Company?

A. It was up to last fall, and it is now, unless they have changed it very recently.

Q. Well, don't you know that this Largey Lumber Company or Largey estate, or Mrs. Largey individually, had bought land in the Bitterroot from Mr. Cobban, which he had entered under the Stone and Timber Act?

By Mr. WALSH.—We object to this question, upon the ground that it is irrelevant and immaterial to the

(Testimony of Ernest R. Kilburn.)

issues in this case, and we call upon counsel to say in what manner it is material.

By the EXAMINER.—Now, you can answer the question, Mr. Kilburn.

A. I know that Mr. Noon, Mrs. Largey's agent, bought some timber lands from Mr. Cobban in the Bitterroot valley, and I know that at the present time that the Speculator Mining Company owns it.

Q. And that it was entered under the Stone and Timber Act by Mr. Cobban, after he had bought it from people that had entered it under the Stone and Timber Act?

By Mr. WALSH.—We object to the question upon the ground that it is irrelevant and immaterial to the issues in this case.

A. I know nothing at all about that.

Q. Were you not here in the courtroom when Mr. Noon was on the stand, and didn't you hear Mr. Noon swear to that?

A. No, sir, I didn't hear Mr. Noon swear to it. I will take that back. He said that it was taken up as stone and timber claims.

Q. You say that you did not know that this was land that was being taken up in the Bitterroot valley under the Stone and Timber Act for Mr. Cobban?

A. It might have been for all I know. I don't know, I didn't ask that. I don't know anything about it; I didn't have anything to do with that purchase, and

(Testimony of Ernest R. Kilburn.)

I didn't know that they were taking it up, if they did take it up.

Q. And don't you know of Mr. Griswold being called in to settle the account, as to the amount of timber that was growing on two different descriptions, and of your being present at the time?

A. I don't remember.

Q. Weren't you there and George Mathews, wasn't he one of the men that took up one of the claims?

A. I don't remember of any controversy whatever in regards to the timber.

Q. Now, then, during these months of July, August, September, October and November, and so much in December as you did work for Mr. Griswold, tell me just what you did for him besides this Camas Prairie matter?

A. Well, I used to ride up and down the Blackfoot, and then go up into the hills and look up timber on unsurveyed land. We looked up timber on surveyed land, too, and if we found any good timber that had not been taken up, I would report it to him. Most of my work was done on unsurveyed land.

Q. That was done on unsurveyed land for this lieu scrip, wasn't it? A. Yes, sir.

Q. On unsurveyed lands with lieu scrip?

A. Yes, sir.

Q. And lieu unsurveyed lands is lands which can be taken up under scrip, isn't it?

(Testimony of Ernest R. Kilburn.)

A. Yes, sir, and land that can be taken up under the Stone and Timber Act.

Q. All of this class of work you did for Mr. Griswold, did you?

A. Yes, sir. If we could find any vacant surveyed lands, we would also report that.

Q. You knew the contract that he had entered into with Mr. Cobban, specifically called for that kind of work? A. No, sir, I did not.

Q. You never saw the contract?

A. That is for looking up—I never saw the contract. Certainly I knew they were looking up timber claims but I never saw the contract.

Q. And that Mr. Griswold got five cents a thousand for timber that was growing on any land that could be taken up in these various ways?

A. That is what he told me he was getting, five cents a thousand.

Q. And you were with him constantly, were you not?

A. No, there was times that we spent in the Variety show that I didn't stay with him all night; I didn't sleep with him there.

Q. You mean that when you were both in Missoula, when Mr. Griswold went to the Variety show you didn't go with him?

A. Well, sometimes I stayed downstairs while he was up in a box throwing money down on to the stage.

(Testimony of Ernest R. Kilburn.)

Q. What were you doing—you didn't spend any of your time gambling, did you?

A. Unless I had a good occasion to.

Q. How many times did you borrow money of Mr. Griswold to gamble with?

A. I used to play slough once in a while.

Q. For money?

A. No, I don't know as I ever did.

By Mr. WALSH.—We object to the question for the reason that it is incompetent, irrelevant and immaterial and not proper cross-examination, and it constitutes a crime against the laws of the State, and he is not called upon to answer a question of that kind, and we therefore instruct him not to do so.

By Mr. MAYNARD.—Of course, if he wants to relieve himself of the crimes he has committed on that ground, we are willing to have it go on record.

By Mr. WALSH.—Well, we object to that upon the ground that it is not proper cross-examination.

Q. You decline to answer the question?

By Mr. WALSH.—The witness declines to answer the question upon the ground that it is a crime against the laws of the State of Montana, and he is not called upon to answer that question. And we object to it upon the further ground that it is not proper cross-examination, and we instruct the witness upon that ground to refuse to answer the question.

(Testimony of Ernest R. Kilburn.)

By Mr. MAYNARD.—It appears from the examination of this witness, that he has of his own accord, through his animus towards Mr. Griswold, thrown out an insinuation against the character of Mr. Griswold, to the effect that he was attending a Variety show, and I propose to show that instead of quietly attending and visiting a Variety theater in Missoula, for the purpose of innocent amusement, he was constantly in the habit of gambling for money, and engaged in the commission of a crime against the State of Montana, and that he also borrowed money from Mr. Griswold for that purpose.

By the EXAMINER.—Under the instructions of the counsel, the witness declines to answer the question.

By Mr. WALSH.—We object to the question also upon the ground that it is irrelevant and immaterial to the issues in this case, and further it is not proper cross-examination of the witness.

Q. Now, then, when you were attending to your business up in the woods, I say that you were not constantly working with, and under Mr. Griswold's direction?

A. As I stated before, I was told to go ahead and look up this timber land wherever I could find it, and whenever I found it, I would report it. Whenever I went out I generally tried to do a day's work.

Q. Now, then, during these months that you were working under the directions of Mr. Griswold, and

(Testimony of Ernest R. Kilburn.)

when you were with him, and you saw Mr. Cobban up there frequently, did you not learn from them just what they were doing?

A. I don't think that I said that I saw Mr. Cobban up the river frequently, but I don't recollect anything—I don't recollect learning anything from their private affairs, learning anything of their private affairs.

Q. And you knew nothing about what was going on in this respect, of men and women that were coming up into the Blackfoot country and making entries of land under the Stone and Timber Act, under the direction of Mr. Griswold and Mr. Jemison?

A. I do know of people taking up stone and timber claims on the Blackfoot river; I know of lots of people that asked me to get them claims, and who also told me if I would get them a timber claim they would pay me twenty-five or fifty dollars. My answer to those people was, that I couldn't get them a timber claim that would estimate over six hundred or seven hundred thousand, and that timber at a dollar a thousand—with timber at a dollar a thousand, which was a big price, and only that amount of timber on it, at that price, they couldn't realize more than a hundred and fifty dollars over and above their expenses. In that case and under those circumstances, they said they would not use their right if the timber didn't aggregate more than that.

(Testimony of Ernest R. Kilburn.)

Q. Just name one of those people in Missoula?

A. Tyler Worden, in Missoula.

Q. Now, name one other?

A. Charlie Dorman, who worked for the Missoula Mercantile Company in Missoula, he asked me if I wouldn't find him a claim.

Q. That is two, now go on?

A. I am not going to call any more names, but I would go into Missoula and say that I had timber claims to locate, and there would be all the way from fifty to a hundred dollars in it, per claim, but that there was no timber claims to be got, and that was all there was to it.

Q. But you are only able now to state the names of two persons who did in the year 1899, have a conversation with you that you claim?

A. Those two people I am very intimately acquainted with, and I remember the instance of them talking to me very well. I know hundreds of others that I talked to, but I am not going to call their names.

Q. Can't you call their names?

A. Well, if I have time to think of them, I can.

Q. But you cannot think of them now?

A. I am not going to call their names on the impulse of the moment; I couldn't remember them.

Q. And you are not going to call their names because you cannot think of them?

A. Not until I have time to think over their names and be sure.

(Testimony of Ernest R. Kilburn.)

Q. Don't you know of Mr. Griswold locating people up there?

A. I have already stated that; yes, sir.

Q. You know that that was his principal work there, didn't you?

A. I knew he was locating people on timber lands, yes, sir.

Q. And you knew that he was locating people on timber lands under his contract with Cobban?

A. Well, I presume so.

Q. Well, now, what was he locating these people on these lands n the interest of Cobban for?

By Mr. WALSH.—We object to this because the witness has not testified yet that he was locating in the interest of Mr. Cobban.

A. I don't know.

Q. You don't know? A. No, sir.

Q. Now, you are prepared to have that stand as your answer on that record, are you?

By Mr. WALSH.—That is no question at all, Mr. Kilburn, you needn't answer that at all.

By the EXAMINER.—It was made a question by the addition of the words, "are you." You may answer the question.

A. Yes, sir.

Q. That while you were associated with Mr. Griswold for four or five months, and constantly up there in the

(Testimony of Ernest R. Kilburn.)

woods, and you saw him locating these people under this contract with Cobban, that you didn't know what he was doing it for?

A. I didn't know what he was doing it for. For fun, I guess.

Q. For fun?

A. To get his five cents commission, I suppose.

Q. Didn't you know of any of these people that were located by Mr. Griswold, or by Mr. Jemison, immediately making entries under the Stone and Timber Act?

A. I would see their applications, yes, sir.

Q. You saw their applications? A. Yes, sir.

Q. You had access to the "Missoulian" and to the "Garnet Mining News," did you not?

A. Yes, sir.

Q. What did you *say?*

A. I did whenever I found one to read.

Q. And during that summer you frequently saw these publications, did you not? A. Yes, sir.

Q. And saw the names of the applicants and the description of the land and the names of the witnesses?

A. I don't know as I spent the time to read those advertisements and applications for timber and stone entries. I don't think I spent the time to read them through. I read the general news in the papers and then threw them down.

Q. So, you don't know, then, anything about these advertisements by reading them?

(Testimony of Ernest R. Kilburn.)

By Mr. WALSH.—The witness has already testified that he did know about them and he says he saw them in the papers. We object to the question for the reason that the witness has said that he did know the advertisements were there, and that he saw them in a newspaper.

Q. Now, the question is, Mr. Kilburn—

By the EXAMINER.—Let him answer this question that is now in the record.

A. There was a few instances in these stone and timber entries where I was a witness and in those cases I refreshed my memory on the day of proof so that I could go down and be a witness to the making of final proof; and in those cases I probably kept posted up on them, but in the other cases, I didn't pay any attention to them because they were nothing to me.

Q. So, as a matter of fact, you were a witness and advertised in the papers as such?

A. I was in some cases; yes, sir.

Q. And as a matter of fact, you did appear as a witness in the matter of making final proofs?

A. I did; yes, sir.

Q. And did you not on each of those days receive five dollars from Mr. Griswold?

A. I received—if it took me a day, or I was held in Missoula a day, I received my pay.

Q. From Mr. Griswold?

A. Yes, just the same as though I was out in the hills.

Q. Well, now, then, will you please tell me, Mr. Kil-

(Testimony of Ernest R. Kilburn.)

burn, if you didn't know what was going on, how it happened that you charged and received five dollars a day from Mr. Griswold for your services in going to this land office, and making final proof?

By Mr. WALSH.—We object to this question because the declaration "If you didn't know what was going on," is insensible; it conveys no knowledge to the witness as to what the matter is, and the witness has testified that he knew that parties were locating timber claims, and he knew that Griswold was selecting timber claims for them. He knew that Mr. Griswold was locating them on the timber claims, that is, was showing them the timber claims; and he knew that these parties were making proofs on the timber claims, and he knew what Mr. Cobban was doing. Now, if there is anything else embraced in that question that was going on, the witness had better straighten that out.

Q. Now, the question is, Mr. Kilburn, if you didn't know what was going on, how did it happen that you charged and received five dollars a day for your services in going to these land offices and making final proofs?

By Mr. WALSH.—Now, the question, Mr. Kilburn, is, how you came to charge five dollars a day?

A. Is that the question?

Q. No, sir.

By the EXAMINER.—Well, let him answer the question in his own way.

Q. Mr. Walsh is trying to instruct you, Mr. Kilburn.

(Testimony of Ernest R. Kilburn.)

By the EXAMINER.—Let the witness answer the question in his own way.

A. I have already stated that I received five dollars a day for every day that I was employed by Mr. Griswold, whether I was out in the mountains looking up timber land, or whether I was in Missoula as a witness for making final proof.

Q. Why did Mr. Griswold send you to Missoula and pay you five dollars a day for making this proof?

A. For being a witness?

Q. Yes, sir.

A. I didn't make any proof; I was only a witness to the final proof.

Q. What do you mean by that?

A. Well, I was a witness to the parties making the final proof.

Q. You mean to say that you yourself did not at that time make an affidavit?

A. Yes, sir, I did make an affidavit.

Q. Well, wasn't that a part of the proofs?

A. Well, I suppose it was; I was called as a witness when the applicant was making final proof.

Q. Well, don't you know that the proofs consist, not only of the affidavit of the entryman, but of the affidavit of two witnesses? A. I do; yes, sir.

Q. Well, then, why do you say that you were just simply called as a witness?

A. Well, I didn't know but what that might be considered the proof.

(Testimony of Ernest R. Kilburn.)

Q. Well, now the question. Didn't you know anything about the facts and circumstances of these entrymen?

A. I knew all about the selections of the land, and I was competent and able to answer all questions put to me by the receiver or the register of the land office, about the facts of the entry, or whoever might be taking the proof.

Q. You swore to the gentlemen on the other side that you had no conversation with these people who took up claims?

A. A witness does not have to have any conversation with them unless he wants to.

Q. And you didn't want any?

A. I didn't want any conversation with the people, no; unless it would be in a friendly and neighborly conversation.

Q. You mean by that on the character of the climate and the crops, or any general conversation?

By Mr. BICKFORD.—We object to that for the reason that it is improper conversation, and irrelevant and immaterial.

Q. Now, Mr. Kilburn, why didn't you talk with these entrymen and entrywomen for whom you made final proofs in regard to the subject matter about which you were to testify?

A. Well, if you will keep that final proof out of that question, I will answer it.

Q. Well, at the time that they appeared there to make the final proof? A. And I was a witness?

(Testimony of Ernest R. Kilburn.)

Q. Yes, sir? A. It was not necessary.

Q. And so you went to this land office and appeared there as a witness, and made the affidavit as a witness to these entries, without knowing anything about it, or having any conversation with them in regard to it?

A. Yes, sir, I could do that.

Q. Very well. Now, then, I read from page 909 of the record, as a sample—as the precedent which was used in every one of the cases where witnesses were called in support of the application of the entrymen, being a copy of the blanks used by the Government in these land offices, substituting your name, Mr. Kilburn, in the place of Mr. Griswold.

"Testimony of Witness Under Act of June 3, 1878, and August 4, 1892.

E. R. KILBURN, being called as a witness in support of the application of Effie M. Kilbourne, to purchase the southwest quarter of section 2, township 13 north, range 15 west, testifies as follows:

"Question 1. What is your age, postoffice address and where do you reside?

Answer.

"Ques. 2. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions?

Answer.

(Testimony of Ernest R. Kilburn.)

"Ques. 3. When and in what manner was such inspection made?

Answer.

"Ques. 4. Is it occupied, or are there any improvements on it not made for ditch or canal purposes, or which were not made by, or do not belong to, the said applicant?

Answer.

"Ques. 5. Is it fit for cultivation?

Answer.

"Ques. 6. What causes render it unfit for cultivation?

Answer.

"Ques. 7. Are there any salines or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable?

Answer.

"Ques. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Answer.

"Ques. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Answer.

"Ques. 10. Do you know whether the applicant has directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?"

(Testimony of Ernest R. Kilburn.)

Q. Now, Mr. Kilburn, if you had no conversation with these people, how could you swear to that and answer the question?

A. We swore to it to the best of our knowledge and belief.

Q. And you undertook to make a solemn affidavit in the land office and answer this question without ever having had any talk with them at all?

A. I would, sir, if I didn't know anything whatever to the contrary that they hadn't made any bargain or agreement to sell; if I didn't know that they hadn't made that, I could swear to the best of my knowledge and belief that they had not.

Q. Are you willing, now, to swear that at each and every time that you did make this affidavit that you always answered the question to the best of your knowledge and belief?

A. Certainly, sir, I did; certainly.

Q. And that you didn't state positively yes or no?

A. I stated positively to the questions as to the character of the land.

Q. I am asking you in regard to that question?

A. That question I answered according to my knowledge, that I did not—and you—

Q. —and you had no knowledge of any kind?

A. I hadn't any knowledge of any contract or agreement being made.

By Mr. WALSH.—Answer the question. Did you know?

(Testimony of Ernest R. Kilburn.)

Q. You undertook to answer that question without having one word of conversation with the entrymen about it?

A. The question only asked me if I knew, and I would say that I do not know.

Q. And in the form of the blanks, the certificate of the register is as follows:

"I hereby certify that each and answer in the foregoing testimony was read to the witness before he signed his name thereto, and that the same was subscribed and sworn to before me this 15th day of December, 1899." Then follows the signature of the officer, "Elmer E. Hershey, Register." And then in the note:

"Note: The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

"Title LXX—Crimes—Chapter 4.

"Sec. 5392.—Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully, and contrary to such oath, states and subscribes any material matter which he does not believe to be true, is guilty of perjury; and shall be pun-

(Testimony of Ernest R. Kilburn.)

ished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)"

By Mr. BICKFORD.—Now, we move to strike out the statement of the counsel as being merely a repetition of the testimony that has heretofore been given in the case, and upon the further ground that it is not proper cross-examination, and further, that it is irrelevant and immaterial, and does not prove or tend to prove any of the issues in this case.

Q. Now, do you think, Mr. Kilburn, that at the time that you appeared before the land office and swore as you did, that it was right for you to answer that question, No. 11, without having any knowledge whatever on the subject.

By Mr. BICKFORD.—We object to that question upon the ground that it is immaterial whether this witness thought it was right or whether it was wrong, and it is not proper cross-examination; and it is utterly immaterial and irrelevant to this inquiry, whether the witness thought it was right or thought it was wrong to do either one thing or the other, and the witness has not stated that he had any knowledge on the subject at all.

By Mr. MAYNARD.—The witness has stated that he

(Testimony of Ernest R. Kilburn.)

had no conversations with any of these entrymen or entrywomen, and he has further stated that he didn't think it was necessary to have such conversations with the entrymen and entrywomen referred to.

By Mr. WALSH.—(To the Witness.) There is no question asked you, Mr. Kilburn.

By Mr. MAYNARD.—That is a question of fact.

A. My memory is very uncertain and I wish you would read Question No. 11 again.

Q. I made a mistake in saying Question No. 11. I mean Question No. 10. Now, do you remember?

A. I don't remember what Qestion No. 10 was; what it was you read in regards to it.

(Question No. 10 referred to, was again read to the witness.)

Q. Now, are you able to answer the question, No. 10, Mr. Kilburn?

A. I think invariably in my answer to that question, I said, "Not to my knowledge."

Q. And you felt that it was legitimate for you to do so at the time, did you, Mr. Kilburn?

By Mr. BICKFORD.—We object to that question upon the ground that it is immaterial whether this witness felt that it was legitimate, and it is not proper cross-examination.

A. Knowing no difference, certainly.

Q. And you felt that it was competent then under

(Testimony of Ernest R. Kilburn.)

the law, for an entryman to get two men to go there, as witnesses, who did not know anything about it?

By Mr. BICKFORD.—We object to that question upon the ground that it is irrelevant and immaterial, and not proper cross-examination; and further it is asking the witness with reference to a matter based upon a question of law, which is always passed upon by the general land office, and the fact that these final proofs have been accepted and passed upon favorably by the Department of the Interior and the general land office, it is conclusive as to the sufficiency of the answers given by the witness, if given as he states.

By Mr. MAYNARD.—The answer is, that the position of the Government is that the testimony of the witness shows that a deliberate fraud was practiced upon the Government in each and every case where he swore as he admits that he did swear, having no knowledge, and that had the Government officers at the time known that the witnesses that were offered by the entrymen knew nothing about it and had no conversation whatever with the entryman in regard to the facts, as he has testified to, that they would not have accepted him as a competent witness; that no Government official would have accepted the proofs, and had the register or receiver knowingly received such testimony as that, they would have been removed from office at once, upon the superior officers being informed of the fact, and I inquired of this witness relative to this matter, for the

(Testimony of Ernest R. Kilburn.)

purpose of testing his credibility and finding out whether or not he understood the matter at the time of making this affidavit. These gentlemen have offered this man as a credible witness, and I am undertaking to show that he deliberately swore to things and facts of his own knowledge, when in fact he knew nothing at all about it.

By Mr. WALSH.—We move to strike out the statement of counsel, for the reason it is argumentative.

By Mr. MAYNARD.—You will reach it soon enough.

By Mr. WALSH.—The sole question here is the production of testimony, and we do not feel called upon at this time to answer the arguments of counsel upon this question at all. We simply desire to put in our objection to the introduction of this testimony, and we simply say that we will content ourselves to reply to the counsel when the times for the argument of this case arrives. And as to the remarks of the counsel, as to what the land officers would or would not have done, we deem altogether irrelevant and immaterial to this inquiry, and we object to it going upon the record.

If the land officers desire to ascertain whether the witnesses on the final proof of the various applicants concerning the matter, and if such an inquiry had been relevant at all, it would have been a very simple matter to put another question to them, and ask them if they had talked with the applicant upon the question, the

(Testimony of Ernest R. Kilburn.)

question being, "Do you know of any agreement or contract existing." Each witness knowing anything whatever about the subject, might answer with absolute truthfulness, and the fact that he has not seen fit to inquire of the witness with reference to that matter, is not even ground for suspecting any collusion or wrongdoing or fraud upon his part, and the cross-examination of the witness was upon the assumption of counsel that he commits perjury when he is asked: "Do you know whether the applicant has directly or indirectly made any agreement or contract with any person, by which the title he may acquire from the Government of the United States may inure in whole or in part to the benefit of any other person except himself," and he says, I don't know of any agreement or contract. That is as far as the cross-examination ought to go, and is as far as it is relevant and material, and the witness should be relieved from any annoyance or bulldozing or aspersions by counsel.

By the EXAMINER.—You can answer that, if you know.

A. No, sir, I don't think it was competent for them to get any two men, but it is competent for them to get any two witnesses that were acquainted with the land, and that could answer the questions intelligently; and invariably my answer to Question No. 10. was, "Not to my knowledge," and the land office accepted it and I considered I was swearing truthfully.

(Testimony of Ernest R. Kilburn.)

Q. But did you see the names of these persons that took up these claims that you estimated for Mr. Griswold down in the Camas Prairie district?

A. Down in the Camas Prairie district?

Q. Yes, sir.

A. A man by the name of Beaton, who lived on a pre-emption.

Q. No, I mean that afterwards were taken up under the Stone and Timber Act.

A. A man by the name of Son Jemison, and his wife.

Q. Don't you know what her name was?

A. No, I don't remember; Jim Mize, and his wife.

Q. Was that in the Nine Mile country?

A. Down in Belmont, yes, sir.

Q. Down in the Nine Mile country?

A. Yes, sir.

Q. I misspoke myself. I mean the Nine Mile country, the names of the persons, Son Jemison and his wife.

A. Yes, sir.

Q. James Mize and his wife? A. Yes, sir.

Q. Well, that is four.

A. Thomas Roll and his daughter, Mrs. William Eddy, and there was Herbert Eddy and his wife, and a man by the name of Yarger, and the other man, I have forgotten his name.

Q. All of these people made entries under the Stone and Timber Act? A. I presume they did.

Q. Didn't you appear as a witness for them?

A. I guess I did.

(Testimony of Ernest R. Kilburn.)

Q. Didn't you also appear as a witness for Mrs. West? A. Yes, sir.

Q. And also for Mrs. Lizzie T. Catlin?

A. Yes, sir.

Q. And John G. Hendricks?

A. I don't remember whether I was a witness for Hendricks or not.

Q. Did you know him at all?

A. I am not personally acquainted with him. I think I saw that man in Helena a couple or three weeks ago, and he introduced himself to me. I think it was John G. Hendricks. I wouldn't be positive about it; I wouldn't know the man now, I believe, although I remember that man being on the stand in Helena a few weeks ago. His name is Hendrick, I suppose; I wouldn't know him, though, if I saw him.

Q. That is all you know about him?

A. That is all I know about him, yes, sir.

Q. And whether or not you were a witness for him, you don't remember.

A. I don't remember, no, sir.

Q. Weren't you also a witness for John B. Reeve, at the time of his making final proof?

A. I don't think I was.

Q. And you had nothing to do with locating him?

A. No, sir, I did not.

Q. Nor anything to do with locating his family?

A. Well, there was one of the family, I believe, that I showed a timber claim to, or a piece of vacant land,

(Testimony of Ernest R. Kilburn.)

up in the Clearwater; it was in March, 1889—or 1899, rather. I am not positive on that matter, but it seems to me I did.

Q. Who was that?

A. Well, it was Mrs. Ehle.

Q. Mrs. Albert Ehle? A. Yes, sir.

Q. You are sure of that?

A. I say I think so; I am not absolutely sure of it. I was up there in that country, and I was up at the Clearwater the same time. I know that she spoke to me about getting a homestead or a piece of Government land; I am not positive about that at all.

Q. Who were you in the employ of them?

A. E. R. Kilburn.

Q. E. R. Kilburn, did you say? A. Yes, sir.

Q. When was that?

A. That was in March, 1899.

Q. But you say you were not a witness for John B. Reeve?

A. I don't remember of ever being a witness for John B. Reeve.

Q. And know nothing about his location or anything about it?

A. Well, I was acquainted with his land, but I don't think I was a witness for them claims. My name might have been in the publication, but I don't think that I was a witness at the land office. I don't think they used me—that they called me at the land office.

(Testimony of Ernest R. Kilburn.)

Q. I wish you would refresh your recollection on that subject, Mr. Kilburn. A. You say so.

Q. You was or was not a witness for John B. Reeve, and knew nothing about it?

A. Well, if I was to answer either way, I would say no, that I wasn't called as a witness, but my name was used in the advertisement.

Q. You think that your name was used in the advertisement?

A. Yes, sir, I think so; I think it was.

Q. Well, what did you mean a moment ago when you said you didn't know anything about his location?

A. I never said that; I said I was acquainted with the land that he had taken up.

Q. And that was all?

A. Yes, sir, that I was acquainted with all the land in that country, and that I could have been an intelligent witness if I had been called.

Q. But you had no conversation with Reeve, at all?

A. I did not, no, sir.

Q. And Hendriks, you have a recollection of meeting him on the streets of Helena, and his coming up to you and introducing himself?

A. Well, he spoke to me; I think that is his name.

Q. And that is the time that he appeared as a witness in the case? A. At Helena.

Q. And you were a witness there?

A. No, sir.

(Testimony of Ernest R. Kilburn.)

Q. You were there on attendance upon the hearing, weren't you? A. Yes, sir.

Q. Are you prepared also to swear that you didn't appear as a witness for him?

A. No, sir, I am not; if they called me as a witness, or sent me down there as a witness for him, I could be a witness for the proving up on his claim, as far as regards the character of the land and the conditions thereon, I could have answered those questions.

Q. That you have already explained, Mr. Kilburn?

A. Yes, sir.

Q. Without, having had any talk with the witnesses?

A. Not with the witnesses, no, sir.

Q. No, but with the entrymen? A. Yes, sir.

Q. Now, in this case, too, at page 891, of Volume 2, of the record, which is as follows: "On September 5th, 1899, John G. Hendrix made timber and stone sworn quarter, and the west half of the southwest quarter, of section 32, in township 14 north, of range 15 west. Notice was published in the "Missoulian," and Albert Jemison, C. L. Griswold, Jacob F. Jemison and E. R. Kilburn were named as witnesses. On November 10th, 1899, final proof was taken before me, and E. R. Kilburn and Albert Jemison appeared as witnesses, and on the same date final certificate and receipt were issued."

By Mr. BICKFORD.—We now move to strike out the statement of counsel, for the reason that it not a question propounded to the witness.

(Testimony of Ernest R. Kilburn.)

By Mr. MAYNARD.—I am reading from the record in this case, page 891, of Volume 2, wherein it appears that Mr. Kilburn appeared as a witness in the case of John G. Hendryx.

By Mr. BICKFORD.—We now move to strike out the further statement of counsel, for the reason that the testimony has already been given, and because it is a mere repetition of the testimony given by the witnesses, and already appears in the record and is before the Court.

By Mr. MAYNARD.—I have no desire whatever to go over the ground again, or the admission made by the witness, for it appears from the testimony of the witness that he appeared as a witness in a number of cases, and he swore, in answer to question No. 10, in the way that he admits that he swore, without having any knowledge with reference to the matter.

By Mr. WALSH.—We move to strike out the statement of counsel for the reason that it is not a question propounded to the witness, but a mere deduction of counsel from the testimony.

By Mr. MAYNARD.—And with that understanding, I will not take up the time to go over each of these cases.

By Mr. WALSH.—We now renew the motion already made, to strike out the statement of counsel.

By Mr. MAYNARD.—From that I infer that counsel

(Testimony of Ernest R. Kilburn.)

desires to have me interrogate the witness as to each of the cases in which he was a witness.

By Mr. WALSH.—We now renew the motion already made, to strike out the statement of counsel.

Q. Can you name a single one of the cases where you were a witness on the part of any of these—for any of these entrymen or entrywomen, where you had any conversation at all in regard to the subject matter about which you testified?

A. I was a witness for my wife. I talked to my wife. I don't know what conversation we had, but outside of that, I had no talk with these parties. I didn't have any conversation with them whatever.

Q. Very well; now, then, you said you did have a conversation with your wife in regard to the matter?

A. I did not—you didn't say in regard to the matter, did you? You asked me if I had any conversation with any of these people, these entrymen or entrywomen, prior to being a witness.

Q. Yes, sir?

A. I certainly saw my wife, and talked to my wife; and the other people; I had no conversation with them, good, bad or indifferent.

Q. Now, I am calling your attention to your wife's claim? A. Yes, sir.

Q. You knew of your wife making a claim under the Stone and Timber Act, didn't you? A. Yes, sir.

Q. That entry was made during the time you were working for Mr. Griswold, wasn't it? A. Yes, sir.

(Testimony of Ernest R. Kilburn.)

Q. And the land was subsequently sold by her to Mr. Cobban? A. It was; yes, sir.

Q. And you attended to all of the business—to the location of the claim, the publication of the notices, and attending before the land office, did you not?

A. Yes, sir.

Q. And attended to the business of selling the land to Mr. Cobban, didn't you?

A. I advised my wife after she had made final proof, what to do with the land.

Q. And that advice was to sell to Mr. Cobban, wasn't it? A. No, sir; it was not.

Q. What was the advice which you gave to her?

A. On account of my wife being quite a ways from Missoula, and Mr. Cobban was selling and buying timber lands, I told her it would be better for her to make out her deed and deliver it over to Mr. Cobban, to sell the land for her; and in case he could make a sale of the land, then the deed would be all ready. That was my advice to her prior to her going to her home at Camas Prairie, where she was stopping at the time.

Q. And at the time she made her final proof?

A. Yes, sir.

Q. At the time that your wife made final proof at Missoula, in Missoula—the deed was drawn up?

A. Yes, sir.

Q. And she executed the deed in favor of Mr. Cobban, as grantee, and delivered it to him?

A. Yes, sir.

(Testimony of Ernest R. Kilburn.)

Q. Now, you say that she did that under your advice, and that the deed was delivered to him to sell, and he wasn't to own it?

By Mr. BICKFORD.—We object to the question upon the ground that it is not in accordance with the testimony given by the witness, the question being at the time when the final proof was made, she made out a deed to Cobban, etc.

By Mr. MAYNARD.—Well, the testimony of the witness is that after the time when the final proof was made he so advised his wife.

A. Yes, sir.

Q. You was not in Missoula at the time, were you?

A. What time?

Q. At the time of the execution of the conveyance.

A. I was there; certainly I was there.

Q. Oh, you were there, were you?

A. Yes, sir; I was.

Q. So Mrs. Kilburn wasn't acting independently, then, by any misconception of the instructions you had given her before leaving home? A. No, sir.

Q. You were right there on the ground, were you?

A. I was down in Missoula, yes, sir.

Q. And being on the ground, you knew that she was executing this deed? A. After she had proved up.

Q. On the same day?

A. Yes, sir; because she went home the next morning.

(Testimony of Ernest R. Kilburn.)

Q. And who delivered the deed to Mr. Cobban?

A. She turned it over to Mr. Cobban to put it into his hands for the sale of the land, as a real estate agent.

Q. But with no understanding on your part that when she executed this deed—your wife executed this deed and delivered it over to him, and he was named as grantee, without you selling it over to him?.

A. Putting her in a position that she wouldn't have to make an extra trip to sign it, if he did have a chance to sell it.

Q. Didn't you understand that when the deed purported in terms to convey to Mr. Cobban, that you were conveying to him?

A. Yes, sir. Futhermore then I had a stone and timber claim on the Blackfoot river, and I sold it to Messrs. McLauirin and McKinnon, of Wisconsin; sold it to them on the way to Drummond. I went home, and immediately that day sold to these people, without any guarantee or anything, and I finally received my money for that claim.

Q. Now, you are volunteering a statement, volunteering to give me some information as to what you did.

A. As to how I done business.

Q. Some seven or eight years before?

A. Yes, how I done business.

Q. Yes, how you did business some seven or eight or nine years ago? A. About six years before.

By Mr. MAYNARD.—I did not call for that, Mr. Kil-

(Testimony of Ernest R. Kilburn.)

burn. I move to strike out the statement of the witness as to the claim that he sold to the Wisconsin parties six or seven years before.

I am not interested in your dealings with those parties, or what you did before you became of age.

Q. I am inquiring what you finally did about the deed which you say you gave to Mr. Cobban for your wife's claim?

By Mr. WALSH.—We move to strike out the statement of counsel as not being a question, and as having been gone over before, and as being entirely superfluous.

Q. Now, do you wish to be understood, when this deed was so drawn up on that day, in which Mr. Cobban was named as grantee, and your wife was named as the grantor, and delivered to him, that that was or was not a sale to him?

A. Well, you can call that a sale, if you want to There was no agreement made about the price that was to be paid to my wife. Mr. Cobban was to sell the land and get as good a price as possible for it.

Q. Wasn't he to buy it himself?

A. He didn't say anything about buying it; he was going to make a sale of some timber lands, and he said he could handle it; and we turned it over to him to handle it for us.

Q. Well, how could he handle it for you when the title was in him? A. Couldn't he sell it?

(Testimony of Ernest R. Kilburn.)

Q. Well, didn't he own it, didn't he have the deed in his own name?

A. Well, he could. Well, he did, and paid my wife the money he got, paid us out of the money he got for it, if he wanted to—if he wanted to so dispose of it. We trusted to his honesty.

Q. Well, Mr. Kilburn, when that deed was handed over to Mr. Cobban and you left the office, and your wife went home the next day, did you think that you owned the land, or that your wife owned the land?

By Mr. WALSH.—We object to the question upon the ground that it is not proper cross-examination, and it is utterly irrelevant and immaterial, and makes no difference what he did with the deed, and the counsel has no right to ask the witness anything about that matter. When he gives the facts of the case, and he tells the conversation with Mr. Cobban, that ends the quarrel; it is utterly irrelevant and immaterial what was said at the time the deed was turned over to Mr Cobban.

Q. Answer the question, please, Mr. Kilburn.

A. Why, certainly not. We had turned it over to Mr. Cobban, and, as I said before, trusted to his honesty whether he would sell the land and pay us the money and keep the deed. He could do as he pleased about that:

Q. Well, then, you understood that Mr. Cobban was the owner of the land.

(Testimony of Ernest R. Kilburn.)

By Mr. WALSH.—We object to the question for the reason that it is irrelevant and immaterial, and makes no difference what the witness understood, and when he gives the facts and the circumstances and tells the conversation had with Mr. Cobban, that settles the matter. And further, does not make any difference what occurred between them, and we further object on the ground that the question calls for a legal conclusion from the witness, and not for a fact, and the witness is not a lawyer, and is not competent to give a legal opinion, and even if he was, it would not be competent testimony.

A. Yes, sir; I suppose that was it; we deeded it to him.

By the EXAMINER.—We will now take a recess until two o'clock P. M.

ERNEST R. KILBURN, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Since the noon recess, Mr. Kilburn, have you had occasion to examine the testimony of Mrs. Kilburn?

A. No, sir.

Q. You have read it over since you have been here, have you not? A. No, sir.

Q. You have not seen it since you heard her testify?

A. No, sir.

Q. Were you present when she did testify?

A. Yes, sir.

(Testimony of Ernest R. Kilburn.)

Q. After your wife went home the next morning, where did you go, after the deed was delivered to Cobban? A. I stayed in Missoula.

Q. Working for Cobban? A. Yes, sir.

Q. That is the time you were working on the Orchard Home Addition, were you not?

A. That was before we went to work at Orchard Home; I think probably I had occasion to drive out there at that time, but we had not commenced any operations out there. Mr. Cobban was ready to sell lots out there, five acre tracts.

Q. And he was preparing for that, and you were working for him?

A. Yes, I was working for him.

Q. Now, when you left this deed with Cobban, as you have testified, and your wife went home and you stayed there, there was nothing said by him about how much he would pay for the land?

A. Mr. Cobban was not at home at the time that I left the deed in his office; I had the deed executed and turned over to Mr. Pound. I think he was in charge of the cash affairs and the like of that, and the confidential man in the office.

Q. How long had Mr. Cobban been away from home?

A. I don't know how many days he had been away; he was away frequently.

Q. You don't know how many days he had been away at that time from home?

(Testimony of Ernest R. Kilburn.)

A. No, sir, I do not.

Q. How many days was it after the leaving of the deed before he returned?

A. Well, it might possibly have been a week or ten days before I seen Mr. Cobban again.

Q. Have you any distinct recollection as to when it was that you saw him after leaving that deed?

A. Yes, sir, I can name a date.

Q. Well, name it?

A. I saw him on the 25th day of December—well, the 25th was Christmas; it would be the 26th day of December.

Q. And that was the first time that you saw him after the delivery of the deed?

A. That is the first time that I am positive of, that I can fix a date.

Q. And how much time had intervened?

A. Well, I don't know; I forget the date of the final proof. If that was the 18th of December, it would have been eight days.

Q. Did you have any talk with him in regard to this deed?

A. Yes, he told me he could handle the claim.

Q. That was the first time you ever had any talk with him about it?

A. Yes, sir, that was the first time.

Q. And you told him that your wife had some six or seven days before that executed a deed to him and it

(Testimony of Ernest R. Kilburn.)

had been delivered over to his agent, Major Pound, and wanted to know if he would handle it for you, is that what you said?

Mr. BICKFORD.—We object to counsel manufacturing a conversation between the witness and Mr. Cobban.

A. Well, the conversation might have been something like that; I don't know if it was word for word like that.

Q. Well, the substance of it, I mean?

A. The substance of it was that I asked Mr. Cobban if he could handle the timber claim for my wife and he said he could; he said he could pay $750 for it.

Q. Is that the sum that he did pay?

A. I believe it was; probably $775; somewhere along there, $750 to $775, as near as I can recollect.

Q. Do you know how much the land cost you?

A. Four hundred and twenty-two dollars or four hundred and twenty-one dollars, something along there.

Q. And the profit would be how much?

A. I will have to get my book and figure it up.

Q. I thought you were such a good mathematician that you could do that in your head?

A. Somewhere in the neighborhood of $300.

Q. What was the $421 or $422; what were those items?

A. Well, there was $400 paid into the land office, $2.50 an acre, and there was the publication, $10, and

(Testimony of Ernest R. Kilburn.)

there was $10 land office fees, and there was one dollar added there, I don't know what it is for, for the testimony or something, making it probably $421.

Q. That is the folios?

A. Well, I don't know what the one dollar is for; I never asked.

Q. That was all the items?

A. That was all.

Q. Where does the $10 that was paid to Mr. Griswold, that was paid to Mr. Griswold come in?

A. I never paid him $10 as I know of, and I don't know whether my wife ever did or not; if she did I did not know anything about it.

Q. You never heard anything about that?

A. I did not.

Q. This is the first time that you ever heard about that?

A. This is the first time I ever heard of it, yes, sir.

Q. On page 2157 of volume IV of the record, I read from the testimony of your wife: "I paid the expenses, all of it for proving up. Q. How much was that? A. Something between $400 and $450, I think. Q. Who did you pay the expenses to? A. I paid the land office $400, Mr. Griswold $10, I think, and $12 for advertising, and I don't know just how much more there was. Q. And you paid the money into the land office? A. Yes, sir. Q. And how did you happen to pay Mr. Griswold this $10? A. Witness fees, I suppose; that is what they charged." Is that true or false?

(Testimony of Ernest R. Kilburn.)

Mr. WALSH.—We object to that method of examining this witness as not proper cross-examination; it does not necessarily follow that it is either true or false.

A. I presume that my wife thought she was right in that matter; she is out $10 there of the $421; that $10 for land offices fees, I suppose she didn't know anything about, and I suppose she thought it was paid to Griswold. She did not ask me anything about what it was paid for or why it was charged, and I suppose she ran off with the idea that that was the witness fees. I heard her when she made that remark on the witness stand.

Q. If she was mistaken, why didn't you call her attention to it at the time?

A. Well, I didn't suppose it made any particular difference whether that $10 went to Griswold or to the land office as far as she was concerned about it.

Q. How much did you figure that profit?

A. Two hundred and twenty-one dollars, I think.

Q. When did you get this $221?

A. From where?

Q. From Mr. Cobban? A. What for?

Q. For the profit that you say you obtained on the sale of your wife's piece of land?

A. Oh, that is what you mean. I guess it was more than $221, but anyway, whatever the amount was, my wife drew the money and she bought some land on the Rattlesnake from Mr. Fraser.

(Testimony of Ernest R. Kilburn.)

Q. That is the amount that you figured, wasn't it?

A. No, it was $250 or $275, somewhere near that.

Q. Well, $250, or whatever it was that you figured there?

A. Yes. I knew her to make a trade for two lots near her house on the Rattlesnake from a man by the name of Fraser, that she bought this real estate from, and she paid him $200; when I went home she said she gave him an order on Mr. Cobban for the money and Mr. Cobban honored the order.

Q. For $200?

A. For that purchase, yes, sir.

Q. That was for a lot on the Rattlesnake?

A. Yes, sir.

Q. Where is that lot?

A. It is in Block 1, Park Addition.

Q. When was that done?

A. I think in July, 1900.

Q. When was the $50 or $75 that was left paid?

A. Well, my wife, when she wanted some money, she went down there and drew it; I did not keep track of it.

Q. So that she got the *lost* and it was figured in at $200, and the $50 or $75, whatever it was, in cash?

A. I don't know how she got it; she got it in cash or something; she spent it anyway.

Q. Can you give any reason for her delay for six months after the delivery of the deed before she got

(Testimony of Ernest R. Kilburn.)

this money from Mr. Cobban by giving an order on him for the price of this lot?

A. Not any more than she did not need the money, and she just left it there.

Q. Did you know a man by the name of Campbell that was connected in some way with the Blackfoot Milling Company at Placid Lake?

A. I have heard of the man, yes, sir.

Q. Have you seen him?

A. I have met him, yes.

Q. So when you say that you have heard of him you mean by that you desire to be understood that you know him?

A. I have met him and talked to him, yes, but I am not personally acquainted with him at all.

Q. Where is he now? A. I don't know.

Q. Do you remember the circumstance of having a conversation with Mr. Griswold at the Florence Hotel in Missoula in regard to a letter that he wrote to Senator Clark?

Mr. BICKFORD.—Objected to as not proper cross-examination; this is directed to no part of the testimony brought out in the examination in chief.

A. I remember of a letter; I don't know whether Campbell's name was signed to it or not; I don't know as I ever seen the letter. Mr. McLaughlin told me that he received a letter that had been sent to Senator Clark.

(Testimony of Ernest R. Kilburn.)

Q. Where was that?

A. Mr. McLaughlin told me in Missoula.

Q. Mr. McLaughlin told you that Mr. Campbell had made charges in his letter to the defendant in this case, Senator Clark, against you and Mr. Griswold, did he not?

Mr. BICKFORD.—The same objection to this.

A. Yes, sir, and Mr. Campbell furthermore proved himself to be a blackmailer.

Q. In that charge?

A. In various other charges.

Q. The substance of the charge was that this blackmailer, Campbell, made against Griswold and yourself as McLaughlin, Clark's agent, told you, was that in your descriptions and locations you were palming off inferior stuff on Senator Clark?

Mr. WALSH.—Objected to as not proper cross-examination. You need not mind answering that, Mr. Kilburn. There has got to be a limit to this thing somewhere.

The EXAMINER.—You can answer.

Q. The Examiner says you can answer.

Mr. BICKFORD.—If you see fit.

A. I decline to answer the question.

Q. For what reason?

Mr. WALSH.—You need not answer that, either.

The WITNESS.—I do not answer.

(Testimony of Ernest R. Kilburn.)

Mr. MAYNARD.—We insist upon an answer.

Mr. WALSH.—We insist that this is beyond the reasonable limit of cross-examination.

Mr. MAYNARD.—Let me refresh the Examiner's recollection in regard to the matter unless you have it in mind?

The EXAMINER.—I had just as soon hear you although I think I remember it very plainly.

Mr. MAYNARD.—I suppose you recall the testimony of McLaughlin and Griswold on the subject?

Mr. WALSH.—This is no part of the cross-examination of this witness concerning any matter that he has testified to. If counsel desires to make this man his witness on this subject, he should have put him on the stand in his part of the case.

Mr. MAYNARD.—It is clearly competent for me when the man is on the stand to call his attention to the subject.

Mr. WALSH.—It does not throw any light on anything the man has testified to. In what way does it bear on what he has said?

Mr. MAYNARD.—Bearing on his credibility, and on the issue involved in this case.

Mr. WALSH.—How does it affect his credibility that somebody has charged him with doing things?

(Testimony of Ernest R. Kilburn.)

The EXAMINER.—In my view, I do not think I would be willing to certify the question as material or relevant or a proper subject of cross-examination; that is really the objection to it.

Q. Now, then, I will ask you again, so that you may understand it thoroughly, in all the facts that you now have testified to and all the circumstances that you have narrated, in the light of what you have testified to on your direct and cross-examination, are you now prepared to swear that you did not know that these entries were being made and the lands being turned over to Mr. Cobban at that time; didn't you know that?

A. I knew that Mr. Cobban was buying timber lands after the final proof was made and I also knew that he was making loans to parties to prove up on lands.

Q. You knew that? A. Yes, sir.

Q. How soon after final proofs were made did you know of Mr. Cobban buying these lands?

A. As soon as he had a right to buy them.

Q. That would be immediately thereafter?

A. I expect a man, after he gets his final receipt and pays for his land, it is his, and he has a perfect right to barter it, trade or offer it for sale.

Q. You have heard that from a good many sources, have you not, during that season?

A. I don't know as I have heard it but I asked authority on the question.

Q. Not on this legal question, not this last one, but I mean you heard a good many times during the season

(Testimony of Ernest R. Kilburn.)

about which you have now testified as to what Mr. Cobban was doing?

A. Why, I knew Mr. Cobban was buying timber lands, yes, sir.

Q. You knew it at the time that these entries were made upon the land, did you not?

A. Well, I supposed the people knew that there was a market for their land or else they would not take it up very likely; there were other purchasers in the field besides Mr. Cobban.

Q. Did you have any talk with any of these people that you associated with in the way of making locations and going out with them to see the land, and at the time of their filing and at the time of their making their final proof as to what they were going to do with their land?

A. No, sir, I never had no talk or conversation with them in regard to their business, what they were going to do with them. My business was to locate them and to see that they was properly located and were shown the land so that they would be able to answer questions and prove up on it, such as the Government requires.

Q. Did you furnish these people that you located with the descriptions?

A. Well, I think that I wrote the descriptions of those claims that I examined for this man Jemison. Jemison told me he was getting $10 apiece for locating those claims or those locators, and after making the examination I took a slip of paper and wrote down

(Testimony of Ernest R. Kilburn.)

the northeast quarter and the southeast quarter or whatever it was, wrote it down on a slip of paper. I would not locate anybody on a piece of land unless I gave him a description of the land that I located him on.

Q. And you gave it to these entrymen and entrywomen?

A. I don't remember giving them; I gave it to Mr. Jemison; he was the man that they were paying to locate them.

Q. You wrote out a description and handed it to Mr. Jemison? A. Yes, sir.

Q. And he did the rest?

A. He did the rest.

Q. And during all of this season when you were with these people, there was nothing said by any of them to you as to what they were going to do with the land after they had made final proof?

A. In the first place it would not be quite gentlemanly for me to pry into those people's business, what they were going to do with the land, and in the next place I was not hired to do that; I was not sent out there for that purpose. I attended to my business and located the people and saw that they were properly located, and it was their business to look after their own affairs and my business to look after mine.

Q. In other words, it was no part of your hiring to ask questions? A. No, sir.

Q. And without asking any questions during all of

(Testimony of Ernest R. Kilburn.)

these months and conversations with Griswold and Jemison and Cobban, it did not come to you in any way what was going on?

A. Mr. Cobban charged me particularly that never to make any bargain or trade with anybody for the purchase of their timber land until after they had a title to it. He emphatically impressed that on my mind that I should not make any bargain or trade.

Q. When was that?

A. After I became acquainted with Mr. Cobban.

Q. Can you state it any more definitely than that?

A. I cannot state the exact day and date.

Q. But it was while you were working for Mr. Griswold?

A. Yes, sir, it was while I was working for Mr. Griswold.

Q. Now, if you were working for Mr. Griswold for $5 a day, and your acquaintance with Mr. Cobban was the amount and degree that you have stated, and the facts are as you have stated, how did it come that Mr. Cobban went to you, a workman of Mr. Griswold's, and charged you with the fact that in your dealings with these people you must be careful not to make any arrangements with them about selling to him; how did that happen?

A. Well, I presume Mr. Cobban thought I was locating people, and he came there and in our talk about taking people out—there was people every day when I would be in Missoula would follow me around and want

(Testimony of Ernest R. Kilburn.)

to know if I couldn't get them a timber claim, and very likely Mr. Cobban thought probably I would be up and tell them what they could do with it, where they could sell their claim or they could do this or that, and he charged me that I should not make any trade. Further than that, I think the first that caused Mr. Cobban to talk that way to me was from parties that had claims and had not proven up on them in other localities in the State of Montana, that came to me and wanted to know if I could sell their claims, and I told Mr. Cobban that such parties had claims for sale. He wanted to know if they had made their final proof and I said I thought not, and he said, if they have not made their final proof you don't want to do any business with them at all.

Q. You say he thought you might tell them what they could do?

A. Well, he may have thought I would have said: "I can sell your claim or if you will take up a claim I can sell it for you," and when I went and made a proposition to buy these claims from parties that had not proven up, he told me that.

Q. Who were they?

A. They were strangers to me; they knew me by reputation and knew what I was doing; they would come and get somebody to introduce them to me.

Q. And what did they want?

A. They wanted to sell their timber claims.

Q. How many of such people came to you?

(Testimony of Ernest R. Kilburn.)

A. Well, there were several people; I don't know as I kept count of them, but I know of several instances.

Q. That is before they proved up? A. Yes.

Q. And they wanted to give you a certain amount of money if you would sell it for them, didn't they?

A. No, sir, they did not.

Q. Now, how did it happen that these people, when you were working for Griswold, happened to know so well what you were doing, that several of them came to you and wanted to sell their claims?

A. I am quite well known in Missoula; I have made it my home off and on, and my trading place for the last seventeen or eighteen years.

Q. And by that same token your business was well known if they came to you for the purpose you have named?

A. As a logging contractor I have employed lots of men to work in the woods. A man would come and work for me a week and go away, and I would not remember them, but they remembered me, and very likely the conversation would be in other camps that Kilburn was estimating timber and buying timber, and if they had a claim they would naturally think probably I could sell their claim for them.

Q. Quite a number of them came and wanted you to get claims for them?

A. Yes, sir, I have people ask me every day in Missoula if I could not find them a timber claim.

Q. Isn't it a fact that people came to you under the

(Testimony of Ernest R. Kilburn.)

circumstances that you now have claimed because it was known throughout that entire Blackfoot country just exactly what Mr. Griswold and his agents and employees, namely, yourself and Mr. Jemison, were doing, and that you had caused it to be known, that you were hiring men and women for $100 to enter lands and sell them to Mr. Cobban for that amount, they getting their expenses paid?

A. I don't believe that there is one person in the State of Montana, who located a timber claim for $100 and agreed to sell it to Mr. Cobban, by Mr. Cobban's orders.

Q. It was all accident, then, that on the same day that they proved up that time and time again they did sell the lands that they entered and proved up on to Mr. Cobban for $100 and expenses?

Mr. WALSH.—We object to this. It appears to be nothing else than an argument of this case by counsel on the one side and witness on the other. There is no facts called for, and the matter is not proper cross-examination.

A. I know of one instance where the man making the proof claimed that the interest was too high that they wanted on the mortgage, and he offered to sell it the same day, and they got to an agreement and the transaction was closed.

Q. What case was that?

A. I don't remember the name.

Q. Do you remember the description of the land?

(Testimony of Ernest R. Kilburn.)

A. No, sir, I don't.

Q. And neither remembering the name not the description, do you remember anything about it?

A. No, sir, nothing more than that.

Q. Do you know of any case coming to your personal knowledge in which any man gave Mr. Cobban a mortgage under these stone and timber entries?

A. I don't know of any, no.

Q. Or a single case where they gave a note?

A. I was not on the inside of the business enough to know that.

Q. So that when you state that you knew that he was loaning money, you knew nothing about it, on these claims?

A. Only just what I heard them saying, that they could borrow money.

Q. Did you meet the Dodds up there?

A. I have seen the Dodds, yes, sir.

Q. And the Jemisons? A. Yes, sir.

Q. You know of them? A. Yes, sir.

Q. And you never heard from them or any of them anything about this matter?

A. No, sir, I never talked to them about it at all.

Redirect Examination.

(By Mr. BICKFORD.)

Q. You were asked on cross-examination, Mr. Kilburn, about the length of time that you worked for Mr. Cobban? How long did you say it was?

(Testimony of Ernest R. Kilburn.)

A. I worked for Mr. Cobban off and on in the month of December, and then on the 1st day of December, 1900, I entered his employ for one year.

Q. At the time when you went to work for Mr. Cobban, had the suit of Mr. Griswold against Mr. Cobban been commenced? A. No, sir.

Q. Was it in contemplation that you know of?

A. No, sir.

Q. When was that action commenced?

A. It was late in the fall of 1900.

Q. Then you had worked for Mr. Cobban long before the commencement of that action? A. Yes, sir.

Q. And you continued to work for Mr. Cobban for a year or a year and a half?

A. I stayed in his employ until July, 1901.

Q. What would you say then, with reference to your hiring by Mr. Cobban or your employment by him having any relation to the suit between Cobban and Griswold or the United States against Clark?

Mr. MAYNARD.—Objected to as leading.

A. Nothing whatever.

Q. You testified also about occasionally seeing publications of notice of final proof in the different papers. Did you make it a habit to read those notices of final proof?

Mr. MAYNARD.—Objected to as leading.

A. No, I never made a habit of reading them.

Q. Would you glance over them to see if you would be called to act upon as a witness in the cases?

(Testimony of Ernest R. Kilburn.)

Mr. MAYNARD.—The same objection.

A. I would, yes, sir.

Q. And you say you got your pay as a witness from Griswold when you did go to make final proof?

A. Yes, sir.

Q. Now, as to the testimony which is given by a witness at the time of final proof, I will ask you to state what the principal knowledge is which is requisite for a witness to have when he becomes a witness on final proof in a timber and stone entry.

Mr. MAYNARD.—Objected to for the reason that it is calling for a conclusion of law and the witness is not competent to express an opinion on that subject.

A. He is supposed to be acquainted with the land, to know that there is no improvements on it, and also the character of the timber and the location of it.

Q. I will ask you to state if ever, at any time while you were a witness in any of these cases, you ever gave testimony which you knew or thought was false?

Mr. MAYNARD.—I object to that question as leading, and as not proper re-examination.

A. I certainly did not.

Q. Now, as I understand it, you were a witness in the case of Lizzie T. Catlin? A. Yes, sir.

Q. And also a witness in the case of Miss Wright?

A. Yes, sir.

Q. You gave your testimony in those cases in accordance with the facts as you knew them, did you not?

(Testimony of Ernest R. Kilburn.)

A. Yes, sir.

Mr. MAYNARD.—We object the question as leading and move to strike out the question and the answer to it.

Q. You were also a witness for your wife on her final proof? A. Yes, sir.

Q. What did you know concerning her having made a bargain or contract or agreement with reference to the sale of her land after she had made final proof?

A. The same day, after she had made final proof, I asked her if she wanted to sell her land and she said she would like to.

Q. Did you know anything about her having made an agreement prior to her final proof to make a sale of the land? A. No, sir, she did not.

Q. She did not make any prior agreement?

A. No, sir.

Q. And you knew that at the time when you were a witness for her, did you? A. Yes, sir.

Q. Now, you have testified on your cross-examination with reference to $275 or thereabouts that was paid by Mr. Cobban to your wife. As a matter of fact, what was the consideration that was paid by Mr. Cobban to your wife for this land?

Mr. MAYNARD.—Objected to, because the witness has already.

A. The whole price, I stated was $750. I am not exactly positive about that; I might be $100 out of the

(Testimony of Ernest R. Kilburn.)

way there, because I have never refreshed my memory on that matter, but it seems to me that was the price.

Q. $750?

A. Yes, sir. It might have been $650; I might be $100 out of the way there.

Q. Did your wife borrow any money from Mr. Cobban to make her final proof?

A. No, sir, she did not.

Q. Then in paying for the land she was paid the whole consideration, and not a part of the consideration.

A. She was, at various times.

Q. And what did that amount to in all?

A. Well, as I said before, either $650 or $750, I don't remember which.

Q. Now, with reference to the question asked you by counsel as to why you did not correct your wife's testimony when she testified that she had paid $10 to Griswold, did you feel at liberty to interrupt the proceedings of this court for the purpose of correcting your wife's testimony when she was on the witness-stand?

Mr MAYNARD.—Objected to as leading.

A. I supposed at the time that it would not be allowed for me to prompt my wife.

Q. Was that the reason you did not do it?

A. Yes, that was the reason. And I would like to state furthermore, that she got in the amount that she actually paid out there, and there was $10 land office fees

(Testimony of Ernest R. Kilburn.)

that she thought was paid for witness fees, and that is how she came to make the error.

Recross-examination.

(By Mr. MAYNARD.)

Q. Mr. Kilburn, you say, now, the reason why, when you noticed that your wife had made a mistake, that you did not interrupt her at the time was you did not feel that it was proper to interrupt a witness on the stand. Now, didn't you know that your wife had to wait a day for that testimony to be written out by the stenographer, and that she did wait for that time before it was in a condition for her to sign? A. I believe she did.

Q. Very well. So, that there was almost a day intervened after she left the stand before she signed it. Now, why didn't you call her attention to it that day before she signed it?

A. Well, I forgot about it, as I did not think it made very much difference whether that $10, if it was misplaced there, she accounted for the amount of money that she paid over that day.

Q. So, you would just as leave have your wife swear to osomething that was not true as not, then?

Mr. WALSH.—We object to that as not a proper question to put to this witness; he has not said anything of that kind, and there is nothing that he has said that would justify such a statement.

Q. You knew when your wife filed on the land, did you not? A. I knew at the time, yes, sir.

(Testimony of Ernest R. Kilburn.)

Q. You knew at the time when she went up to look over the land? A. Yes, sir.

Q. And you knew for sixty days that elapsed between the final and the final proof, did you not?

A. I know there was seventy days elapsed.

Q. Now, then, you were with her at the time she went and located on the land, and you were with her at the time she filed, and you were with her seventy days thereafter, and when she proved up, and now you say after she had proved up, you then said, "Wouldn't you like to sell this land?" and she said she would?

A. Yes, I would like to correct that statement—

Q. Now, then—

Mr. WALSH.—Wait a minute, let the witness answer.

The WITNESS.—He said in his question that I was with her seventy days. I don't know—I might have met my wife once in that seventy days; I was away from home all the time.

Q. You were away from home after she went on the land, but you were with her then? A. Yes.

Q. And you were with her at the time she filed on it?

A. Yes.

Q. Now, then, in all the time that had preceded, there never had been a word said to her about what she would do with the land after she had proved up on it?

A. No conversation with her in regard to the selling of that land at any time.

(Testimony of Ernest R. Kilburn.)

Q. And you did not know for what purpose she located on it? A. I did, sir.

Q. What was the purpose?

A. For her own personal benefit.

Q. How was she to get a personal benefit?

A. Whatever she got over and above what the land cost her.

Q. Then she located on the land for her personal gain in selling the timber and the land?

A. For her personal benefit, yes, sir.

Q. And the personal benefit would come in that way?

A. I don't know how else it would come.

Q. And knowing that, you had no conversation with her at all about the person to whom she would sell?

A. No, sir, nothing more than that she knew that Mr. Cobban was buying timber lands, and I knew that he was buying timber lands also, and after she had proved up on that timber land she had a perfect right to sell it, and I told her that she could go and sell it to Mr. Cobban after she proved up.

Q. And you had had no talk with her previous to that time about the fact that she would immediately convey to Mr. Cobban after she had proved up?

A. No, sir.

Q. But as a matter of fact, within two hours after she proved up, she did sell it?

Mr. WALSH.—We have got that in the record before at least a dozen times, and I do not see how the matter is assisted by getting it in fourteen times more. There is no

(Testimony of Ernest R. Kilburn.)

doubt in the world that within a short time, the same day, Mrs. Kilburn proved up, she made a deed for this land, and to Mr. Cobban, which appears to be fairly established on this record.

Q. Answer the last question, please?

A. Yes, sir. The reason why that this transaction was made so soon after the final proof was made was on account of my wife living about twenty miles from Missoula, which is a rough, dangerous road to travel, and we did not know that she would have any business back to Missoula for maybe six months, and rather than to have her come away down there to make out the deeds, I told her it was better to have it made out before she went home, and leave it in Mr. Cobban's office, and that he, in the meantime, if he had an opportunity to sell it, or wished to buy it, independent of anybody else, that he had a liberty to do so.

Q. Whereabouts was she then living?

A. She was stopping, then, with her mother.

Q. Where is that?

A. Camas Prairie, Potomac is the postoffice address.

Q. Twenty miles from Missoula?

A. Twenty or twenty-five miles, yes, sir.

Q. What was there dangerous about the trip from Camas Prairie to Missoula?

A. Well, there is bad, high grades, narrow, and at that time of year they are icy and slippery, and there is considerable traffic on the road, that you might meet teams on the road where there is no room to pass, which would be dangerous to go by.

(Testimony of Ernest R. Kilburn.)

Q. It was out of gentle solicitude for the welfare of your wife that you had her convey two hours after making final proof, on account of the danger that might come to her, is that it? A. Not altogether.

Mr. BICKFORD.—We object. The witness has fully explained the reasons for it, and it does not require any further explanation.

Mr. WALSH.—And he ought not to be subject to these insults from counsel, either, based on whatever consideration he has for his wife.

Q. That was the reason, Mr. Witness, that caused this speedy delivery of the deed?

Mr. WALSH.—Read the last question.

The WITNESS.—I have some respect for my wife; yes, sir.

Q. When had you heard of any dangerous conditions or any accidents that had happened between the home of your wife and Missoula?

Mr. WALSH.—I can tell you of one that happened to me on that road.

The WITNESS.—It is not always necessary that a person should wait until somebody is killed or crippled before he decides whether a road is dangerous or not.

Q. And so, without knowing whether he would take it or not, you deeded to ohim for that reason?

A. I knew that Mr. Cobban was selling timber lands, and that he was going to make a sale of some timber lands.

(Testimony of Ernest R. Kilburn.)

Q. Who was he going to sell to?

A. Anybody that he could.

Q. How did you find that out?

A. Well, there was lots of parties there looking after timber lands, and Mr. Dinsmore—

Q. Who were the lots of parties that were looking after buying Cobban's land?

A. J. T. Carroll was figuring on buying some timber land from them. Bernard Noon, of the Speculator mine, was also there figuring on buying timber lands. Mr. Dinsmore also told me that there were parties had options on these timber lands.

Q. Did you know anything at the time about Noon and Carroll what they were figuring on?

A. I knew at the time that Carroll was trying to buy timber lands from them.

Q. You knew it at the time?

A. I don't know right at that time; I knew what he had done.

Q. Done what?

A. He was negotiating a deal with those people for timber.

Q. Who did you learn that from?

A. From Mr. Dinsmore.

Q. Whatever you knew you learned from Dinsmore about this matter?

A. Well, I talked to Mr. Dinsmore more than I did to Mr. Cobban.

(Testimony of Ernest R. Kilburn.)

Q. Did you know anything about the matter at all till you sat here and heard these men swear on the stand here yesterday or the day before?

A. Do you think I am here to olie? I know what I am talking about, and I am going to answer those questions under my oath, and I am answering them that way. Yes, sir, I did.

Q. You did what?

A. Know those people were there before I seen them here in this room, and I never seen J. T. Carroll before nor since he was in Cobban's office in Missoula.

Q. And did you know what business he had in Cobban's office at the time?

A. Yes, Mr. Dinsmore said that he was there negotiating a deal for some timber land.

Q. What timber land?

A. I don't know, timber land that they had for sale.

Q. They had a large amount of timber land for sale, didn't they, in various sections of the country?

A. Sometimes they did, and sometimes they didn't have so much.

Q. Now, you heard all that that you now testify to, and during the months that you were associated with Mr. Griswold you did not hear a word about what he was doing, nor what arrangements he had made with Cobban nor what Cobban was going to do with the land that you entered?

Mr. WALSH.—We object that he has answered this

(Testimony of Ernest R. Kilburn.)

question before, and gone over it again and again and again.

Q. Now, can you explain to me how you happen to know so much about this other matter, and did not hear a word about this other?

Mr. WALSH.—We object to this because he has not testified that he knew so much about this. He has testified just exactly what he did, and he has not testified that he did not know a word about the other; on the contrary, he has testified in detail just exactly what he did know concerning what Griswold was doing, so that there is nothing to explain.

A. On the one hand, I had known Mr. Griswold ever since he was in the country. I did not have to ask anybody what his business was because I knew it, and he had me engaged to help him do the same business, to locate timber. Mr. J. T. Carroll came into the office. He was a man that I never seen before, and it was a kind of curiosity to me to knew who he was, and I asked Mr. Dinsmore for my own personal knowledge who the gentleman was, and he told me, and he said he was negotiating a deal for some timber lands.

Q. So you knew all about what Griswold was doing without asking?

A. I knew he was locating timber, because he hired me and we traveled together back and forth on unsurveyed land; we were out in the timber several days on unsurveyed land. I knew what our business was out there.

Q. And you knew the purpose of it without asking?

(Testimony of Ernest R. Kilburn.)

A. I knew that if we found 40 acres or 160 acres that had enough timber on it to justify to place scrip on it, that we would put it down on our book and take it to Mr. Cobban's office.

Q. And have these people enter upon it and convey to Cobban?

A. Yes, but the people did not enter upon it; they placed scrip on that land.

Q. I mean those under the Stone and Timber Act?

A. I never was in the timber when Mr. Griswold was locating anybody.

Q. If you were not with Mr. Griswold weren't you with Mr. Jemison, the man that was working for him?

A. I went down there to examine some claims, as I stated before, for Mr. Griswold, and Mr. Jemison claimed that he was getting $10 apiece for locating those people on them.

Q. Did you know Mr. Sparks at that time?

A. Yes, I am acquainted with Mr. Sparks.

Q. Did you see him up in the woods?

A. I never met him in the woods; I saw him up the Blackfoot valley.

Q. Where did you see him in the Blackfoot valley?

A. I saw him at Ovando and Clearwater.

Q. In this season that we are talking about, 1899?

A. Yes, sir.

Q. What was he doing there?

A. He was estimating timber.

Q. Who for?

(Testimony of Ernest R. Kilburn.)

A. I don't know; I supposed that he was estimating timber for Mr. Cobban.

Q. Sparks? A. Yes.

Q. Did you know Mr. Hemley? A. Yes.

Q. What was he doing?

A. He was estimating timber.

Q. Who was he estimating for?

A. Mr. Cobban, as far as I knew.

Q. Now, you don't know who Sparks was estimating for, do you?

A. I never asked him and he never told me. I know that this man, Morris, was with him, and Morris said he was working for Cobban, and that is all I know about it.

Q. Did you see Mr. McLaughlin up there?

A. I never did. I saw Mr. McLaughlin electioneering once up the Blackfoot river.

Q. Didn't you hear that Sparks was working for McLaughlin and estimating for him?

Mr. WALSH.—Objected to on the ground that the witness is expressly called to give hearsay by the question.

A. I know that Mr. Sparks was working for Mr. McLaughlin after this time, after I saw him up the Blackfoot.

Q. When was that, that you knew that he was working for McLaughlin?

(Testimony of Ernest R. Kilburn.)

A. In October, 1899, or he said he was working for McLaughlin; that is after he left the Blackfoot.

Q. What was he doing then?

A. He was estimating timber on Nine Mile, down at St. Regis, up the Bitterroot, down on the main line of the Northern Pacific and wherever he was sent.

Q. You don't know but what he had been doing the same work for McLaughlin on the Blackfoot, do you?

A. I don't know whether he was or not. I know Mr. Cobban was paying him for estimating up there, When I met him up at Clearwater and Ovando.

Q. How do you know that?

A. Well, he left a little bill at the Clearwater Hotel that was not paid, and the parties sent it in to Mr. Cobban's office to pay, and I presumed from that that he was working for Mr. Cobban.

Q. You presumed that, did you?

A. Yes, that last.

Q. How long did you know of Sparks working up there in the Blackfoot country estimating?

A. I think he was up there about two and a half months.

Q. And you never heard during that time that he was working for McLaughlin in estimating there?

A. No, sir, I never heard nothing about it.

ERNEST R. KILBURN.

(Testimony of John M. Peers.)

Subscribed and sworn to before me this 25th day of April, 1902.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

JOHN M. PEERS, a witness for defendant, after being duly sworn in his behalf, testified as follows:

Direct Examination.

(By Mr. BICKFORD.)

Q. Your name is John M. Peers, I understand?

A. Yes, sir.

Q. How old are you?

A. I was born in 1843.

Q. I will ask you to state where you lived?

A. I lived at Woodworth.

Q. In what county?

A. In Powell County.

Q. State of Montana?

A. Montana. Milton Township, I believe.

Q. How long have you lived there?

A. Since 1893.

Q. Are you acquainted with one Chauncey L. Griswold, who formerly lived in that neighborhood?

A. Yes, sir.

Q. How long have you known him?

A. Well, I have known him six or seven years, probably. I could not say just to the day.

Q. Did you ever meet him in Missoula?

(Testimony of John M. Peers.)

A. Yes, sir.

Q. I will ask you if you ever met him in Missoula about the 1st of November of 1901?

A. That would be this last fall? Yes, sir, I did.

Q. I will ask you if at the time that you met him in Missoula, at the time mentioned, if you had any conversation with him? A. Yes, sir.

Q. Where were you at the time when this conversation occurred?

A. Well, I was in his store, and we went right straight down to the foundry together.

Q. Will you kindly give to the Court what that conversation was with reference to this case?

Mr. MAYNARD.—I object to that question as entirely incompetent, immaterial and irrelevant to any issue in this case. No foundation whatever has been laid so far as I can remember.

Mr. BICKFORD.—There is a foundation here; I have got the question.

Mr. MAYNARD.—For any such question, and I call upon counsel, if he says that there has been a foundation laid, to let me know what it is?

Mr. BICKFORD.—The foundation was laid in the examination of Mr. Griswold, which called his attention to a conversation between himself and Mr. Peers in Missoula in November of 1901, at the store of Mr. Griswold, as it has been stated to the witness in the questions so far propounded to him.

(Testimony of John M. Peers.)

Q. Now, I will ask you to state whether in that conversation which you had with Mr. Griswold, Griswold said substantially to you that in the case that was pending concerning these timber lands sold to Senator Clark, that he had a lot of testimony up his sleeve, and that he was not going to give that testimony unless he was paid his price for so doing, or words to that effect?

A. Yes, that is about the way it was as near as I can remember, or that they wanted him to write it out; they wanted him to write the whole thing out, the Government officials did.

Q. Now, when was this, Mr. Peers?

A. Well, it was sometime in November.

Q. Of what year? A. Last year.

Q. Was there anyone else present besides you and Griswold at the time this conversation took place?

A. Not that I remember, no.

Q. And concerning what was the conversation at that time that brought this question up, or this declaration made by Mr. Griswold?

A. Well, it was concerning this suit, this land suit.

Q. This suit that is now on trial here?

A. Yes, sir. There had been—so he told me—there had been a trial or examination before that.

Q. Did he say before whom?

A. Well, I think he did, but I could not remember who it was. I had heard about it myself and asked him in regard to it.

(Testimony of John M. Peers.)

Q. Didn't he say something about an examination or testimony having been taken before one Zevely?

A. I cannot remember the name.

Q. Now, you say this conversation took place when you and Mr. Griswold were alone and no one else was present as I understand you?

A. No one present that I know of.

Q. Now, have you given all of the conversation that occurred at that time?

A. Well, no, I don't think I have given it all; we had quite a talk about it.

Q. Was Mr. Cobban's name mentioned in this conversation? A. Yes, sir.

Q. What was said about that?

A. We spoke about Cobban. I think I asked him how the trouble came between him and Cobban, what the trouble was—

Mr. MAYNARD.—I object to the conversation that my friend is now inquiring about, as I think that no foundation whatever was laid for that part of the examination.

Mr. WALSH.—We propose to call Mr. Griswold to the stand and ask him about it.

Q. Well, go on and state now, answer the question?

Mr. MAYNARD.—I will take the benefit of an exception at this time that the testimony is not competent, as no foundation has been laid for it and it is entirely immaterial and irrelevant.

(Testimony of John M. Peers.)

A. He said that Mr. Cobban had not used him right, had not paid him what he thought was right, but before they got through that he thought he would make them go some, or something to that effect.

Q. What was said about his having received at that time a large sum of money from Mr. Cobban?

A. He had received money, yes, sir.

Q. What did he say concerning that, Mr. Peers?

Mr. MAYNARD.—This is objected to for the same reason.

A. He had received a good deal of money from Mr. Cobban but not enough, not what he thought was satisfactory; that is what he told me, it was not enough.

Q. Didn't he also say that he expected to get a whole lot more?

Mr. MAYNARD.—Objected to as leading, and purely incompetent.

A. Yes, he said he expected to get more out of it.

Q. Have you related now all of that conversation which took place?

A. All that I remember of the conversation, yes; I don't remember anything more of it.

Q. Do you know one L. A. Wells, living in your section of the country, Mr. Peers? A. Yes, sir.

Q. How long have you known him?

A. Well, ever since I came to the country; nine years.

(Testimony of John M. Peers.)

Q. I will ask you to state whether or not you know his reputation in the community in which he lives for truth, honesty and integrity? A. I do.

Q. Is it good or bad?

A. Well, it has always been bad.

Cross-examination waived.

(Witness excused.)

It is stipulated by counsel that the Examiner may read, correct and certify that the testimony of this witness has been correctly reported and transcribed, with like effect as if the witness had done it himself.

Whereupon, further hearing was adjourned until February 24th, 1902, at 10 A. M.

Thursday, April 24th, 1902, 2 P. M.

Hearing resumed pursuant to adjournment.

By consent of counsel for plaintiff the witness, Ernest R. Kilburn, was withdrawn, and JOHN M. PEERS was recalled for further examination.

Direct Examination.

(By Mr. BICKFORD.)

Q. Mr. Peers, you are acquainted with Mr. Jakways and Mr. Faust of Ovando, are you?

A. Yes, sir.

Q. How long have you know them?

A. Since 1893.

Q. Have you ever done any business with them?

A. Yes, sir.

(Testimony of John M. Peers.)

Q. Have you been doing business with them since 1893? A. Yes, sir.

Q. I will ask you to state if you ever had any business transactions with them wherein they loaned you money?

Mr. MAYNARD.—Objected to as immaterial and irrelevant and incompetent, either to disprove any of the allegations contained in complainant's bill of complaint or to prove any of the allegations contained in the defendant's answer.

A. I have had business with them ever since I came to the country, and I have borrowed money from them, from $50 to $300 at a time, I suppose.

Q. Did they require you to give security for this money?

A. Not any; they charged me on my account with it, and we settled for it the same as goods. I never gave them security, in fact, I have borrowed as high as $300 without any note or anything, only just had it charged on my account, that is all that ever passed between us.

Q. Then the transactions between you and this firm have always been evidenced by an open account in their store? A. Yes, sir.

Q. That is what I understand?

A. That is right.

Q. And no note or security of any kind was required of you for the money so borrowed?

(Testimony of John M. Peers.)

A. Not any.

Cross-examination.

(By Mr. MAYNARD.)

Q. Were you the owner of any real estate at the time? A. Yes, sir.

Q. When you borrowed this money?

A. Yes, sir.

Q. What did you own?

A. I own a ranch there and some stock and machinery.

Q. How large was your ranch?

A. Well, my homestead is 160 acres.

Q. Improved? A. Yes, sir.

Q. Did you have title to it?

A. I have, yes, sir.

Q. Did you at the time you borrowed this money?

A. Well, I have had title to it for five years.

Q. You had title to it before you borrowed any money from them, did you not?

A. Well, no; I borrowed money before I had a title.

Q. Before five years ago? A. Yes, sir.

Q. But you were acquiring title to this 160 acres of land at the time, were you not?

A. Well, it was unsurveyed land when I went on it. Of course, I went on a homestead on it, and when it was surveyed I filed on it and proved up on it.

Q. How long have you owned it?

A. I have been on it since 1893.

(Testimony of John M. Peers.)

Q. And have you owned it for more than five years now?

A. Well, yes, I guess it is about five years; I can't just tell you the date, I don't just remember; four or five years—well, no, I guess it is not that long; it is not more than three years, I guess, since I got a patent.

Q. Did you own other land besides that?

A. No, sir.

Q. What machinery did you have?

A. Well, I have a binder, a separator and a hay loader.

Q. Farming machinery?

A. Yes, farming machinery.

Q. And horses and cattle? A. Yes.

Q. How many horses?

A. Well, I have got ten or twelve horses, I suppose.

Q. How many head of cattle?

A. Oh, I suppose there is thirty-five or forty head of cattle, now.

Q. Did you have them at the time you borrowed this money?

A. No. When I first went there I didn't have a great deal.

Q. Now, did you do all your trading there?

A. Pretty much always, yes.

Q. How far do you live from Ovando?

A. Twelve miles.

Q. Did you have any occasion to buy many goods there?

(Testimony of John M. Peers.)

A. Well, I had occasion to buy enough for the family on the ranch.

Q. They have a general store, clothing and everything of that kind?

A. Yes, sir—well, some clothing; they do a general merchandise business there, a country store.

Q. And at times, as I understand you, you bought these goods and they were charged to you, and then when you sold your product of your farm or your cattle, you paid for your goods that you had bought?

A. Yes, sir.

Q. By turning in the checks to them, if you were paid in checks? A. Yes, sir.

Q. And they would collect the checks for you and take from the proceeds of the check the amount that you were owing them?

A. Sometimes they did, yes, sir.

Q. And if there was any balance coming to you they would credit you on the books? A. Yes, sir.

Q. Now, during these years you have been in the employ of Jakways & Faust, have you not?

A. No.

Q. Under contract?

A. I put up their hay one or two years, yes.

Q. Under contract?

A. Under contract, yes.

Q. And they would pay you in part by crediting you on their books with what was coming to you?

A. What the contract amounted to, yes, sir.

(Testimony of John M. Peers.)

Q. How much were the contracts in amount?

A. Well, I think I put up their hay for three years, and it was from $300 to $400.

Q. A year?

A. During the last year it was something over $400, the contract amounted to.

Q. A year? A. For that year, yes, sir.

Q. So that for three or four years you have had coming to you from Jakways & Faust on your contract, from $300 to $400?

A. Yes, sir, something like that.

Q. What do you mean by putting up their hay; what work was it?

A. I stacked their hay from the fields.

Q. You cut it yourself, did you?

A. No, sir, they cut the hay and I raked it and stacked it.

Q. And this amounted to $300 or $400 a year?

A. Well, yes, I think the first year I put it up it amounted to about $300, and I think the last year something over $400.

Q. When did they pay you?

A. Well, we had an account there, I traded with them. They would pay me any time I asked them for it.

Q. How much of a family have you got?

A. Well, I have got quite a large family, probably five or six of us.

(Testimony of John M. Peers.)

Q. Yourself and wife and four children?

A. Yes, more that that. There is generally quite a family. Of my own children there is only three of them that stay at home.

Q. How old are they?

A. The youngest one is eighteen and the oldest one is thirty-four or thirty-five years old; that is, my oldest son; he stays at home most of the time.

Q. The expenses, then, would not be very much for your whole family, would it?

A. Oh, yes, it is quite an expense. My accounts probably would run from $1,000 to $1,300 a year.

Q. Which you would buy at their place?

A. Yes, the whole business, some years more and some years less. Of course, everything I use on the ranch I got from them, all the machinery repairs and iron and coal or anything that I used in my blacksmith-shop, anything like that. It would amount to, I think, some years as high as $1,300.

Q. You keep a stopping place, do you not?

A. Yes, sir—well—

Q. What do you call it, a hotel? A. No.

Q. What do you call it?

A. Well, I keep the postoffice there, and the logging camp used to stop at my place, the men, going back and forward. This last year, of course, anyone that comes and wants a meal, but we do not keep a regular stopping place. We did do so for a year and paid license and kept a stopping place at one time.

(Testimony of John M. Peers.)

Q. For how long? A. For a year, I think.

Q. What year was that? A. Two years ago.

Q. And all the supplies that you bought to feed the public you got from Jakways & Faust?

A. Well, yes, pretty much all; I might buy some outside, but very little; I generally trade with them all the time.

Q. And under the circumstances, knowing you as they do, and knowing the kind of man you are and the business you are doing, they were willing to trust you from time to time with such money as you needed in your business?

A. Yes, sir. If I wanted $100 or $50—I never borrowed more than $300, and that was when I was actually in debt to them, that I knew that I owed them on the books. When I borrowed $300, probably the whole amount that would be charged up to me would be $500, the book accounts, and at the store that would be as much as $500.

Q. Why did you borrow $300 of them at a time that you knew you were in debt to them?

A. Well, I had a lawsuit; I was carrying on a lawsuit, not very long ago, only two or three weeks ago I borrowed $300 from them when I was coming away from Ovando to a lawsuit in Deer Lodge. I went in and got $300.

Q. That is just two weeks ago?

A. Two or three weeks ago that I got the money.

(Testimony of John M. Peers.)

Q. And you were owing them at the time?

A. Yes, I owed them at the time.

Q. What arrangements did you make with them about paying it back?

A. I didn't make any arrangements at all; I went in and just asked them if they could let me have the money, and Mr. Faust said he could, and we made no arrangements at all.

Q. You didn't tell them anything about when you would pay it back?

A. Well, I didn't have time to talk to him about it.

Q. In the course of the business, don't you know that they had some idea as to when you would pay it back?

A. Well, yes, they know that I always do pay them.

Q. Certainly, but I mean haven't they some idea as to when it would be paid?

A. Well, I don't think they had; I didn't give them any idea.

Q. From the course of the business that you had been doing with them for these years past?

A. Well, I don't see why they would; I guess they thought there was property enough to pay them; I don't suppose they had a great deal of risk or anything like that. They did not question me anything about it. I went in and asked them for the money and they gave me part in cash and a couple of checks. I wanted some checks on Deer Lodge, and they gave me that

(Testimony of John M. Peers.)

and the balance in money. It was $300, and I think they gave me $240 in checks, if I remember right, and $60 in money. Mr. Faust said that was all he could spare that morning and wanted to know if that would do, and I said, yes, that was all right. There was no arrangements made or no security or anything like that or no notes.

Q. How much do you claim to be worth, Mr. Peers?

A. Oh, I don't know how much; I couldn't say. I have got a ranch down there and a few head of stock and some machinery.

Q. Just give us an idea?

A. Oh, well, probably $2,000 or $3,000; between $2,000 and $3,000.

Q. Would you be willing to sell out for $3,000?

A. I think if I was sold up it would not bring more than that.

Q. I know, at forced sale, but would you be willing to sell for twice that amount?

A. Oh, yes, I think so.

Q. You think you would?

A. Yes, I will say that I would.

Q. Would you for $5,000?

A. Yes, I will get up and leave for $5,000.

Q. Would you for $4,000?

A. Well, I don't know about that. I never offered it for sale or never have thought about selling as far as that is concerned. I have got a home there, and cal-

(Testimony of John M. Peers.)

culate to stay there, and never put any price on it, and it would take me some time to think that over before I make a sale.

Q. At any rate, you kind of halt a little bit about swearing that you would sell out for $4,000?

A. Well, I haven't thonght the thing over about selling at all.

Q. At any rate, this is the largest sum that you ever got from Jakways & Faust, $300, and that is two or three weeks ago?

A. Yes. Well, I don't know as it is when I come to think about it. I think I got as much money as that from them before, but I don't remember just how much it was nor I couldn't tell just the time, but I could tell from the books if I could see them; I could not tell now. I have borrowed sums of money from them at different times.

Q. Have you ever borrowed that you can remember distinctly any sum approaching $300?

A. Well, yes, pretty close to that.

Q. When?

A. Well, either two or three years ago.

Q. How much was that?

A. Well, I don't remember, but I think it was $260 or $270.

Q. What was that for?

A. That was to pay a bill that I was owing that came on to me and I didn't have the money, and I went to them.

(Testimony of John M. Peers.)

Q. Did you pay it back? A. Yes, sir.

Q. How long after you borrowed it?

A. Oh, probably six months or a year. I think I borrowed it in the spring, in March, and I paid it back some time in the January following.

Q. Under your contract? A. No.

Q. How? A. I paid them cash.

Q. Now, then, do you wish to be understood as saying that they loaned you this $250 or $260 from March until the following January without making any charge at all for interest?

A. They charged it on the book, and I paid them whatever interest they had to pay on the money; that was the agreement.

Q. What was the agreement?

A. If they needed to borrow money in their business, they would charge me the same interest that they had to pay. That was always the agreement with Mr. Faust and me, and if they didn't need to borrow any money in their business they would let that go, but if they did, I would pay the interest on it, whatever interest they had to pay, either 10 or 12 per cent, whatever they had to pay in the bank if they had to borrow money in the bank to do their business; if they had to borrow, they would charge me interest for any money that I got.

Q. As a matter of fact, did they charge you interest on this loan that you now refer to?

(Testimony of John M. Peers.)

A. Well, I think they did; I think they charged me interest for about three months on it; as near as I can remember they charged me interest about three months.

Q. You are not prepared to say definitely just exactly the number of months that they charged you interest on it, are you?

A. No, I can't just remember, but as near as I can remember, it was three months that they charged me interest on it.

Q. What other amount was there?

A. Oh, well, there has been small amounts, $40 or $50, that I have borrowed from them, and as high as $90; one time I remember getting $90 from them?

Q. When was that?

A. Well, that was three or four years ago.

Q. That is the third largest amount that you can definitely remember? A. Yes, sir.

Q. How long did they carry you on that?

A. Oh, probably three months, till I made a sale of my hay or something other like that; it was along in the summer, and that fall I sold hay or grain or something like that.

Q. On that trifling amount of $90 for three months they did not charge you any interest?

A. No, they did not charge me any interest on it.

STIPULATION.

It is stipulated between the parties that the Examiner can read, correct and certify that the testimony of this

witness has been correctly transcribed, with like effect as if he had done so himself.

I, Henry N. Blake, Standing Master in Chancery and Examiner, do hereby certify that I have read the foregoing testimony and that the same has been correctly transcribed.

HENRY N. BLAKE,

Standing Master in Chancery and Examiner.

OLIVER E. MUCHMORE, heretofore sworn as a witness, recalled on behalf of defendants.

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Muchmore, I want to ask you what efforts you made to sell your claim taken up under the Timber and Stone Act after you had made final proof?

A. After I had made final proof and got my receipt I went down the Blackfoot river and went to Bonner, and stopped over there two nights and one day, and was going to see the Blackfoot Milling Company or their agent there in regard to whether I could sell to them, and if I could, what terms I could get; but the agent was not there. He was away in Anaconda at the time—on the second day—I got in in the evening of one day, and stayed that night and the next day and that next night, and he had not returned. During the forenoon there was a man by the name of William Boyd was going to Missoula, and he said, "You had better get in and go down with me,

(Testimony of Oliver E. Muchmore.)

Ed," and I did get in and go down with him to Missoula without having seen these other parties, because they was not at home, and during the time I was there in Missoula I met Mr. Cobban, and consequently I sold to him.

Q. What agreement or understanding had you entered into with anybody prior to the time that you went to Bonner for the purpose of selling to the Blackfoot Milling Company, that obligated you in any way not to sell to the Blackfoot Milling Company?

A. Well, I did not consider that I was under any obligations to anybody.

Q. And what agreement had you made to sell to anybody that would prevent you from selling to the Blackfoot Milling Company if you saw fit to do so?

A. None whatever.

Q. Mr. Muchmore, you were called on the part of the Government, were you not, in this case before?

A. Yes, sir.

Q. I wish you would state what your circumstances at home were at the time you were over here to testify before?

A. Well, they was not very good. My wife was sick when I came away, I had not calculated when I got my subpoena that I would be gone over two or three days, and I thought it would be safe to leave my family for that length of time.

Q. Let me ask you if your wife was expecting to be confined at that time?

A. She was. I had expected her to be confined almost

(Testimony of Oliver E. Muchmore.)

any time, although I did not know exactly, and she was in poor health. I was called away from home here to Butte, and I was held here from Friday, when I got here, to the following Saturday night. Then court adjourned and we went to Helena. I was held in Helena and called to give my evidence the 19th, but I did not get away that same day; it was the next day, I think.

Q. Who was there at home at the time?

A. There was nobody but my wife and three children.

Q. How old were the children?

A. The oldest one was three years old.

Q. How far away from a physician was she?

A. About forty miles.

Q. Three children, and the oldest three years old?

A. The oldest three years old.

Q. Now, prior to the time that you went up on the stand to testify, did you have any conversation with the counsel for the Government concerning the significance in the affidavit of the word "speculation," and what would constitute taking up the land for speculation?

A. I did.

Q. I wish you would state, Mr. Muchmore, at the time that you gave that testimony what your mental condition was?

A. Well, I was worried a whole lot about my family, because I did not know what was going to happen; she might get sick, my wife, while I was away. I didn't have any sleep much in Helena on that account; I was worried and my mental condition was not any too good, and es-

(Testimony of Oliver E. Muchmore.)

pecially when I was on the stand I was anxious and my mind was at home. I did not have any thought in regard to the case whatever much at all, any more than I knew that I was called there and had to swear on the stand, and while I was on the stand my thoughts were far away from there, at my home.

Q. And what did counsel for the Government say to you about the matter of taking up this land for speculation?

A. Well, he asked me if I had taken it up and I told him I had. He asked me several other questions, and he wanted to know if I had not entered into an agreement and contract, and I told him I had not. He wanted to know if I sold the timber and I told him I did, and from his conversation that he told me, my best recollection now of it is that if I had taken that timber up and sold it, it was a speculation; therefore that is why I made the statement on the stand in regard to the speculation.

Q. When was that with reference to the time that you testified that he so told you?

A. How long before, do you mean?

Q. Yes.

A. Well, I could not say; it was a day or two, something like that.

Q. Now, I call your attention to your testimony found at page 854 of the record, in which you stated, "Mr. Griswold was up there in the first place and told Mr. Faust he was the agent of Mr. Cobban, and if anybody wanted to take up a timber claim and sell it to Mr. Cobban he

(Testimony of Oliver E. Muchmore.)

could do so and get— Q. Get how much?" It appears that your first answer, "Well, he told him that we could get $100 and perhaps a dollar a thousand for all there was over 500,000 feet of lumber"—but that answer seems to have been changed so as to be made to read: "Well, Griswold told Faust that we could get $100, and Faust said perhaps a dollar a thousand for all there was over 500,000 feet of lumber." Now, Mr. Muchmore, I wish you would tell us what, if any, conversation you had with Mr. Faust concerning the possibility of selling a claim in case you should take one up?

Mr. MAYNARD.—I object to this most extraordinary course of procedure. It is something that I never heard of before. It appears that this witness was called here and gave his testimony; that he was examined and cross-examined, and a redirect examination given; that it was taken in shorthand and transcribed by the official stenographer and read over to him or read by him in the presence of the Examiner, and corrected, and after having been so corrected, signed and sworn to, and Muchmore, the witness, was paid his fee and discharged. And now after more than four months have elapsed, the defendants produced this witness here for the purpose of attacking his own sworn and corrected testimony. I object to the course as illegal and unjustifiable in every way. I object to the question for the further reason that counsel cannot now go over this same ground and go into this subject and examine a man after he has been ex-

(Testimony of Oliver E. Muchmore.)

amined thoroughly, that it is without precedent and in utter and absolute violation of all the rules of evidence.

Mr. WALSH.—I desire to state in answer that we have had no opportunity whatever to cross-examine this man concerning the testimony as it now appears upon the record.

A. Well, we had some conversation about timber land at that time. I understood that Mr. Griswold was up there; I did not see him. Mr. Faust informed me that I had a right to take up a timber claim, and if I wanted to do so I could do so, and if I desired to sell it, I could. The conversation went on in that light.

Q. Now, do you remember anything further of the conversation, Mr. Muchmore?

A. Well, in regard to Mr. Griswold telling him that I could take it up, why, I swore that he told me that, and I presume that he probably said it, but I have no recollection of swearing to that in my evidence before, but from the evidence here I must have sworn to it.

Q. What have you to say as to Mr. Faust having said to you that if you took up a timber claim you could sell it to Mr. Cobban for $100 over and above your expenses?

Mr. MAYNARD.—I object to that question because he has already sworn that he did, and you cannot inquire into it again, and it is simply an outrage upon the due course of justice to try and put this witness back to try and get him to impeach his own sworn testimony.

A. Well, he told me that he thought there would be a

(Testimony of Oliver E. Muchmore.)

possibility—he did not say a possibility; he said there would be a show to sell it to Mr. Cobban, he supposed there would, because he was buying timber land. I did not make any agreement to sell it to him or anything of that kind or of that sort, but I supposed that I could sell it to him because I understood he was buying timber land, if I sold it to anyone.

Q. Now, what have you to say as to his having said anything about the price at which you could sell it to Mr. Cobban?

Mr. MAYNARD.—I object to that question because it is entirely incompetent. The same question has been asked and answered, and that it is utterly illegal to undertake any such course of procedure as is attempted here.

A. Why, I think that he did say something about that I could sell it to Mr. Cobban, that he thought that I could sell it—he did not say positively that I could sell it, but of course he gave me to understand that if I so desired to sell the land, there would be a market for it, provided I could make an agreement with Mr. Cobban to sell it to him after I had made my final proof; that is the way I intended to have the evidence given in before.

Cross-examination.

(By Mr. MAYNARD.)

Q. Where do you live?

A. At the present time about four miles north of Ovando on Montour creek.

Q. And you swore to this testimony in the presence of

(Testimony of Oliver E. Muchmore.)

the Examiner in the month of December last, did you not?

A. I was here and in Helena, yes, sir.

Q. Was there anybody else present besides yourself and the Examiner when you read over your testimony and swore to it before him?

A. They were holding court there in the room, in his office.

Q. And you knew what you swore to at the time, didn't you? A. Well, hardly.

Q. When did you first make it known that you desired to change your testimony?

A. Well, I said I would like to be called on the stand again so that I could look over my testimony after I got home, and that day there I didn't have any right recollection of what I had sworn to.

Q. Whom did you tell that to?

A. I don't know that I told anybody particular; I made that remark around home there.

Q. Did you write to either of the counsel in this case?

A. No, sir.

Q. Who did you tell it to; did you tell Jakways & Faust?

A. I did not tell it to them that I know of; I might have said something about it in their presence, although I couldn't swear to that.

Q. You might have said something about it in their presence?

A. Yes, sir, that I would like to review my testimony.

Q. Whereabouts was it that you said this?

(Testimony of Oliver E. Muchmore.)

A. I did not say that I said it to them directly or indirectly; I said I may have said it in their presence.

Q. Whereabouts were you?

A. Well, I was at home or in town or around there in the country; I could not swear exactly where it was as to that.

Q. You had a conversation with Jakways in regard to the matter? A. No, sir.

Q. With Faust? A. No, sir.

Q. Neither of them?

A. No, sir, not particularly either one of them.

Q. What? A. No, sir, I did not.

Q. Never had any conversation with Faust previous to your going on the stand in regard to this matter?

A. You mean now?

Q. Yes.

A. No, I haven't talked to Mr. Faust at all, any more than just to pass the topics of the day and so forth and so on, since I have been in Butte.

Q. You have been in town here two or three days, haven't you?

A. I have been in town ever since last Thursday night, about twelve o'clock—I mean a week ago last Thursday night.

Q. You have been here continuously for a week?

A. Yes, sir.

Q. And you have had no other business here than to testify in this case? A. That is all.

Q. And Faust has been here; he is now in the room,

(Testimony of Oliver E. Muchmore.)

and has just left the stand; he has been here for a week, too, hasn't he?

A. I don't know how long he has been here.

Q. Haven't you been together?

A. We room up here at the Beaver Block.

Q. You have been rooming in the same block?

A. Yes, sir.

Q. In the same room? A. No, sir.

Q. Have you been eating together?

A. Once or twice, I believe; only once, I believe, that I ate at the same table.

A. And during this week that you and Faust, who has just left the stand, have been here together, rooming in the same block and eating together, as you testify, you have never referred to what you are going to testify now?

Mr. WALSH.—It is not fair to the witness to say that they have been rooming together or eating together; he testified that they were rooming in the same block and ate together once.

Mr. MAYNARD.—I said rooming in the same block and eating together, as he testified.

The WITNESS.—I had one meal with Mr. Faust.

A. And he has had no other business here except to testify here?

A. I don't know whether he has or not.

Q. And you have never had any conversation with him as to what you were about to testify to?

(Testimony of Oliver E. Muchmore.)

A. No, sir, not one word.

Q. Nor with his counsel?

A. With whose counsel?

Q. With the counsel for the defendant in this case.

A. I had a conversation with Mr. Bickford in regard to my being in Bonner.

Redirect Examination.

(By Mr. WALSH.)

Q. You were subpoenaed to come here as a witness on behalf of the defendant?

A. I was subpoenaed to come here, yes, sir.

Q. And you came in obedience to that subpoena?

A. I did.

Q. You have been waiting to testify?

A. Yes, sir.

Q. To-day is the first time you have been called to the stand? A. Yes, sir.

OLIVER E. MUCHMORE.

Subscribed and sworn to before me this 3d day of May, 1902.

HENRY N. BLAKE,

Standing Master in Chancery and Examiner.

MARION B. WATSON, after being duly sworn as a witness for defendant, testified as follows:

Direct Examination.

(By Mr. BICKFORD.)

Q. Your name, I believe, is Marion B. Watson?

A. Yes, sir.

Q. Where do you live?

A. Well, I have been stopping at Emmet, Idaho, for the last two months and a half.

Q. When did you last live in Montana, Mr. Watson?

A. I left two years ago the 17th day of this month.

Q. Where did you leave from?

A. From Missoula.

Q. How long had you lived in Missoula prior to that time? A. About a year and eleven months.

Q. What part of Missoula were you living in, in town?

A. I was living in Missoula the last five months I was in Montana.

Q. Just before moving to Missoula where did you live?

A. I was working for the Dodd Brothers, seven miles above Bonner, on the Blackfoot.

Q. How long had you lived there?

A. I moved there in November, I think.

Q. Of what year? A. 1899, I think it was.

Q. November, 1899? A. Yes, sir.

Q. I will ask you to state what your business or oc-

(Testimony of Marion B. Watson.)

cupation was while you were living on the Blackfoot river? A. I was lumbering.

Q. For whom?

A. I was running a lumber camp for myself one winter.

Q. What winter was that?

A. That was for the Blackfoot Milling Company.

Q. In what winter?

A. That was in the winter of '98-99.

Q. Had you some acquaintance with one Chauncey L. Griswold when you were living on the Blackfoot river? A. Yes, sir.

Q. How long had you known him—where did you know him?

A. Well, I got acquainted with him just after I came to this State of Montana, a short time.

Q. How long ago was that?

A. That was in 1898.

Q. And you have known him ever since?

A. Yes, sir.

Q. I will ask you to state what, if anything, you had to do with C. L. Griswold in the year 1899—what, if any, business you had with him.

A. Well, I was employed by him for a few days on the Blackfoot river.

Q. What doing?

A. Looking up some unsurveyed timber.

Q. In what part of the Blackfoot valley was that?

(Testimony of Marion B. Watson.)

A. It was in southeast of Ovando, and on the north fork of the Blackfoot.

Q. How far from the town of Ovando?

A. Well, I don't know exactly just how far it was; I could not tell as to that, just the distance.

Q. I will ask you to state whether you ever had any business dealings with him concerning any entries under what is known as the Timber and Stone Act?

A. I never had no dealings with him, no, sir.

Q. Did you ever make any examination of any land for him that was taken under the Timber and Stone Act? A. No, sir.

Q. Did you ever make an entry yourself under the Timber and Stone Act of the United States?

A. Yes, sir.

Q. When was it that you made that?

A. I filed on a timber and stone claim, I think, on the 18th day of July, 1899.

Q. Prior to doing that, had you had any talk with Griswold about doing so?

A. Not any more than I understood that he was looking for timber, and I asked him about—spoke to him one evening, I met him on the road near where I lived, and spoke to him, and he said that if I could find a claim, where it was all right; but to ask him any questions about who was taking timber claims, or who was wanting timber claims, he did not tell me.

Q. You had no conversation with him about that?

A. No, sir.

(Testimony of Marion B. Watson.)

Q. Did you ever make any bargain or agreement with Mr. Griswold with reference to taking up a timber claim for his interest, or in the interest of anyone else?

A. No, sir.

Q. As a matter of fact, at the time when you took up your timber claim, as you have testified to, in July, 1899, had you ever had any conversation with either Griswold or anybody else with reference to taking it up in the interest of anybody except yourself?

A. No, sir.

Q. What did you do with reference to the timber and stone claim; did you make final proof upon it?

A. Yes, sir.

Q. Up to the time when you had made final proof upon your timber and stone claim, what have you to say with reference to your having made any bargain or agreement with reference thereto?

A. I had none at all.

Q. You never had any bargain or agreement with anybody? A. No, sir.

Q. Had you ever had any talk with Griswold except the talk that you have related to me now concerning this timber and stone claim up to that time?

A. No, sir.

Q. What did you do with your timber and stone claim after you had made your final proof upon it?

A. After I had made my final proof in Helena, Mr. Griswold came to me and wanted to know if I wanted to sell, and I told him that I did not know as I did. He

(Testimony of Marion B. Watson.)

said that he knew where there was a buyer if I wanted to sell, and we had a talk of a few words, and I came to the conclusion to sell to him, and so I did.

Q. To whom did you sell?

A. I sold to Mr. Cobban.

Q. Was that the first talk that you had ever had with anybody about the selling of the claim?

A. Yes, sir.

Q. With whom did you make the bargain to sell the claim? A. I was talking with Mr. Griswold.

Q. Did you and Griswold come to terms as to how much you were to receive for it? A. Yes, sir.

Q. Who was present when you consummated the sale or finished the sale of the timber—who paid you the money for it. A. Mr. Griswold.

Q. Where were you when this was done?

A. In Helena, at the Cosmopolitan Hotel.

Q. Who else was there?

A. My wife and my mother.

Q. I will ask you to state with reference to the transaction with reference to the other two whose claims you have mentioned, your wife and your mother; was there any bargain or agreement prior to that time with reference to the sale of their claims? A. No, sir.

Q. Were you present when the negotiations were carried on with reference to the sale of these other claims of your mother and your wife? A. Yes, sir.

Q. Did you hear the bargain made?

A. Yes, sir.

(Testimony of Marion B. Watson.)

Q. Now, at that time, had there ever been any bargain or agreement made by your wife or your mother, with reference to the sale of their claim?

A. Up to the time they made proof?

Q. Up to the time they made proof? A. No sir.

Q. Now, I will ask you to state who furnished you with the money with which to make final proof?

A. Well, Mr. Griswold—I got the money through him.

Q. In what way did you get it?

A. I got it as a loan.

Q. And from whom did you get it as a loan?

A. I got it from Mr. Cobban.

Q. Did this agreement with reference to the borrowing of money extend to any other claim than yours?

A. No, sir.

Q. Do you know where the money was obtained for the final proof upon your wife's and mother's claim?

A. It was gotten the same way as I got mine.

Q. Did you make the bargain for it, or did they?

A. I made the bargain for it myself.

Q. And made the arrangement with reference to borrowing the money for both your mother and your wife? A. Yes, sir.

Q. And was that bargain or agreement made with Mr. Griswold, too? A. Yes, sir.

Q. Now, I will ask you to state what, if any, conversation you had with Mr. Griswold with reference to the sale of your claim to him, or anyone else, or what, if

(Testimony of Marion B. Watson.)

any, conversation you had with him with reference to the sale of the claim of your mother or your wife prior to the time of your making final proof?

A. We had none; we never made any bargain to sell to anyone till after we made final proof on our claims.

Q. You never had any bargain or agreement with anyone? A. No, sir.

Whereupon further hearing was adjourned to Saturday, May 3d, at 10 A. M.

Saturday, May 3d, 1902, ten o'clock A. M.

Hearing resumed pursuant to adjournment.

MARION B. WATSON recalled for further direct examination.

(By Mr. BICKFORD.)

Q. You said on yesterday that you were employed by Griswold to assist in looking over timber claims in the Blackfoot country, in the summer of 1899, I believe?

A. Yes, sir.

Q. When was it that you were employed by him?

A. That was in August.

Q. Of the year 1899? A. Yes, sir.

Q. And when did you go to work?

A. Well, I couldn't say just what date; it was in the month of August, 1899, sometime; I don't recollect the date that I went to work on.

Q. What did you first do in this employment?

A. I was looking up some unsurveyed timber.

Q. For what purpose?

(Testimony of Marion B. Watson.)

A. He didn't tell me; I was looking for Mr. Griswold; he gave me the plats of the townships and ranges to look over, and I was with his brother.

Q. Whereabouts did you go to do this?

A. Southeast of Ovando, on the north fork of the Blackfoot.

Q. How long did you remain there?

A. I think I was there about eight days.

Q. From that point where did you go?

A. After we got through there, I went home.

Q. Did you again work for Mr. Griswold?

A. No, sir.

Q. Then how long were you at work for Griswold, all told?

A. I was about eight days working for him; I think it was eight days.

Q. Is that all the work you did for him in the summer of 1899? A. Yes, sir.

Q. Now, at that time—I believe you testified yesterday, that you made your own location of a timber claim?

A. Yes, sir.

Q. Who went with you upon this timber claim at the time you first looked it up?

A. I was alone when I first located the claim.

Q. Did you locate more than one? A. Yes, sir.

Q. How many did you locate; how many did you look up, rather? I don't mean locate.

A. I found a claim for myself, my wife, my mother and my father.

(Testimony of Marion B. Watson.)

Q. Who is your father?

A. Doc. E. Watson.

Q. How soon after you looked up these claims did you go there with the people to look them over again?

A. Well, it wasn't only just a few days; I don't remember just the number of days, but it was only two or three or four days, or something like that.

Q. When was this?

A. This was about the first of July.

Q. In what year? A. In 1899.

Q. Well, now, go on and state, if you will, just what you did when you went to formally locate these claims?

A. Well, sir, I ran out the lines and found the corners and took the numbers.

Q. Who was with you at the time?

A. My father was with me part of the time.

Q. Who else?

A. No one at that time when I first found them.

Q. Now, go on to the time when you went to the claims to locate them.

A. I showed my father his claim; he went with me, and also my mother and my wife.

Q. Were they with you? A. Yes, sir.

Q. State who was with you at that time, and what you did.

A. I and my wife and my mother had—my wife and my mother and myself, had claims on opposite sides of the river. The three of us were together on their claims,

(Testimony of Marion B. Watson.)

and when I and my mother were together, we were on her claim.

Q. Was Griswold with you at this time?

A. Yes, sir.

Q. Where did you start from to go there?

A. I was living at that time about four miles above Mr. Griswold on the Blackfoot.

Q. Well, now, go on and state whether or not when you went from home you went on to the claims, and state what you did, and the order in which you did it. You went from your home to Griswold's, I presume?

A. Yes, sir.

Q. When was that, in the morning?

A. Yes, sir.

Q. Then what did you do?

A. That is, when I went with my wife and my mother, we went past Mr. Griswold's place.

Q. Did Mr. Griswold go with you?

A. Yes, sir, he went horseback. He went along with us. I had a team.

Q. Where did you drive to first?

A. I came down to Mr. Griswold's place, and he got his horse and went along with us, and I drove up as far as I could, to the Blackfoot, on the south side, as far as I could go, with the wagon, and then we went together; we walked.

Q. Well, what did you do with the wagon, did you leave it there? A. Yes, sir.

(Testimony of Marion B. Watson.)

Q. What have you to say as to your wife and your father and mother going with you?

A. Yes, sir, they did.

Q. Did you point out these claims to them?

A. Yes, sir.

Q. All of them go with you to look at them?

A. Yes, sir, and took the numbers of the claims.

Q. Was Griswold with you when you went over the claims? A. Yes, sir.

Q. Did he go over the claims with you?

A. Yes, sir.

Q. How long were you on the claims?

A. We were about—I don't know just exactly what time it was, we left where our team was, but it was somewhere between twelve and one o'clock when we got back, and we stopped there and took lunch. Mr. Griswold came down to Clearwater, where his place was, and after dinner we stopped there and went fishing and caught some trout.

By Mr. MAYNARD.—Who caught some trout?

By the WITNESS.—I, my wife and my mother.

Q. You got back to Griswold's about what time?

A. Along in the afternoon; I suppose it was between four and five o'clock; I couldn't say just what time it was.

Q. How soon thereafter did you file upon these claims?

(Testimony of Marion B. Watson.)

A. Well, I couldn't say as to the date, but it was only a few days.

Q. Whereabouts did you go to file?

A. Went to Helena.

Q. Who went with you?

A. Mr. Griswold, I believe; I couldn't say positively whether he did or did not, now.

Q. Well, did Griswold pay you wages at this time?

A. No, sir.

Q. He wasn't paying you wages at this time?

A. No, sir.

Q. Now, you say you filed in the Helena land office?

A. Yes, sir.

Q. And who went with you to the office at that time, if anybody?

A. I don't recollect of anyone going except us three. my wife and my mother and myself.

Q. And after you filed, what did you do?

A. Well, sir, after we filed, we went home.

Q. Now, did you have any conversation with Mr. Griswold with reference to these claims, prior to the time that you filed on them? A. No, sir.

Q. Did you have any conversation at all with Mr. Griswold, between the time when you filed and the time when you made your final proof?

A. Not about any timber or timber claims at all.

Q. Well, did you ever talk with Griswold about obtaining money for making the final proof, or borrowing the money from anybody?

(Testimony of Marion B. Watson.)

A. I was talking with Mr. Griswold, when I first asked him if he was going to take up any timber claims, and he said he was looking up unsurveyed timber.

Q. He said he was looking up unsurveyed timber?

A. Yes, sir, and he says, "If you want to take up a claim, I know where you can get a loan of the money, if you haven't got it yourself."

Q. Did he say from what source the money could be obtained, or from whom?

A. Well, he said, I would have to give a mortgage to the United States land office to make your final proof.

Q. Did he say from whom you could get the money?

A. No, sir, he did not.

Q. When was that with reference to the time of your making your filing?

A. This was before I filed on the claim.

Q. Well, then, as I understand you, you went later to the United States land office to make your final proof, did you not? A. Yes, sir.

Q. Well, now, at the time that you went to make your final proof, who went with you to Helena at that time, Mr. Watson?

A. There was I, myself, and my wife, and Mr. Griswold; I couldn't say who the other party was, because I do not recollect.

Q. Well, what did you do when you got to Helena?

A. We made final proof on our claims.

Q. Who was your witnesses?

(Testimony of Marion B. Watson.)

A. Mr. Griswold was one, and the other witness, I don't recollect who it was now.

Q. Before you go on with that, I want to ask you with reference to a time prior to your making your filing or before the time when you first went to Helena for the purpose of making your filing up on the land, what, if any, rumors or reports had you heard with reference to there being a market for timber lands in the Blackfoot country?

A. I never heard any, only I heard that Mr. Griswold was looking up timber.

Q. Had you heard anything concerning his hiring people to go up on timber lands in his interest, or in the interest of anybody else? A. No, sir.

Q. Had you heard anything about anybody paying the expenses of persons going and taking up timber lands? A. No, sir.

Q. Had you heard anything about people going on and taking up timber claims for the consideration of one hundred dollars—for making these entries?

A. No, sir.

Q. Now, after you had gone to Helena and made your final proof, did you have any talk with Mr. Griswold, or with anyone else, with reference to your claims?

A. After we made final proofs, Mr. Griswold came to me, and he wanted to know if I wanted to sell. We talked about it, and he said if I did want to sell, why he knew of a buyer. He talked with me and my wife and

(Testimony of Marion B. Watson.)

my mother, and we talked it over, and we decided to sell.

Q. Where was this conversation held?

A. In the Cosmopolitan Hotel, in Helena.

Q. Well, as a matter of fact, did you do anything with reference to that, after you had concluded to sell?

A. Well, after we had decided to sell, we made our deed and received our money.

Q. What was the price offered?

A. About five hundred and fifty dollars, I think it was, if I recollect right.

Q. Five hundred and fifty dollars for each claim, do you mean? A. Yes, sir.

Q. Where did you go to make out this deed, Mr. Watson?

A. Well, I couldn't give you the name of the block or the building, but it was in Helena.

Q. Do you know who did the taking out of the deeds?

A. I don't remember now.

Q. This is after the time you made your final proofs, as I understand it?

A. I don't understand you.

Q. I say it was after the time that you had been to the land office and made your final proofs?

A. Yes, sir.

Q. Before that time had you had any talk with anybody about selling your claim? A. No, sir.

Q. Had Mr. Griswold made any proposition to buy the claims before that time? A. No, sir.

(Testimony of Marion B. Watson.)

Q. Then at the time you made your final proofs, there was no contract or agreement to sell?

A. No, sir.

Q. Either with yourself or your mother or your wife, I should say, with reference to the sale of these claims to anybody? A. No, sir.

Q. There was no contract or agreement with any of them with reference to that? A. No, sir.

Q. Now, at the time when you went to work for Mr. Griswold, looking up unsurveyed lands, as you have testified, what, if any, instructions were given to you by Mr. Griswold, with reference to locating people upon timber lands, and offering them a hundred dollars?

A. There was none at all.

Q. Do I understand from that, that he gave you no instructions whatever? A. No, sir.

Q. I will ask you if you have ever at any time been in the office of R. M. Cobban, in Missoula?

A. Yes, sir.

Q. Were you in his office during the summer of 1899?

A. Yes, sir.

Q. Were you ever present at any time when there was any conversation between Mr. Cobban and Mr. Griswold, with reference to this timber matter?

A. Yes, sir.

Q. About when was that, Mr. Watson?

A. About when was this?

Q. Yes, sir?

(Testimony of Marion B. Watson.)

A. That was in August, I think.

Q. Will you kindly tell what that conversation was?

A. Well, I couldn't say; I think, though, I understood from the conversation—I understood Mr. Cobban to tell Mr. Griswold to make no bargains in any way towards locating people on stone and timber claims.

Q. Was that the only conversation you ever heard between them with reference to the subject?

A. No, I heard them later on.

Q. Well, what were the subsequent conversations, or the substance of them, if you can give them to us?

A. Well, that he wasn't to locate anyone on timber and stone claims, or make any bargains with them, but if they should have a chance, or if anyone should wish to buy their claims, after they had made their final proofs, they could sell them.

Q. Well, was that all that was said?

A. Yes, sir, I think that was all.

Q. That was all that you know of the conversation?

A. Yes, sir, I wasn't interested in the conversation, and it wasn't any of my business, and I didn't think to inquire about it.

Q. Now, was there anything said as to the nature of any sort of an agreement or contract, or arrangement, that Mr. Griswold was allowed to make concerning these claims?

A. According to the conversation, he was not allowed to make any.

(Testimony of Marion B. Watson.)

Q. Was not allowed to make any sort of an agreement? A. No, sir.

Q. We want to ask you a question about the time when you were in the Cosmopolitan Hotel and made a bargain for the sale of this land, as you have testified to; we want to ask you to state just who was present?

A. When we made a bargain to sell, after we had made final proof?

Q. Yes, sir?

A. There was I and Mr. Griswold and my wife and my mother.

Q. And your wife's name is Katie Watson, and your mother's name is Harriet Watson? A. Yes, sir.

Q. Was Mr. Cobban or Mr. Dinsmore present at that time? A. No, sir.

Q. What, if any, contract or agreement had you ever made with Chauncey L. Griswold, with reference to the sale or transfer of your timber and stone entry, or the timber and stone entry of Harriet Watson, or the timber and stone entry of Katie Watson, prior to the time of your making final proof?

A. We had never made any.

By Mr. BICKFORD.—I believe that is all.

Cross-examination.

(By Mr. MAYNARD.)

Q. Where did you say you are now living?

A. At Emmet, Idaho.

(Testimony of Marion B. Watson.)

Q. At Emmet? A. Yes, sir.

Q. What are you doing there?

A. I am working for J. L. Reed.

Q. What doing? A. Driving team.

Q. Well, what is Reed's business?

A. He is in the sawmill business.

Q. How long have you been driving team for Mr. Reed?

A. I have been there about two months and a half.

Q. What did you do just before that?

A. Well, I wasn't doing anything this last winter.

Q. Wasn't doing anything at all?

A. No, sir, that is worth speaking of.

Q. Just such jobs as you could pick up?

A. Well, I didn't work very much in the winter time; I worked a few days last fall for different ones, a day, maybe, or half a day, and I was haying up in the Boise valley, and farming.

Q. Then what did you do before that?

A. Last summer I was working for Mr. Reed.

Q. The same man you are working for now?

A. Yes, sir.

Q. And doing the same work?

A. I was driving team; I wasn't exactly working for him. I had a contract to put some logs to his mill.

Q. And what did you do before that?

A. Well, sir, I generally followed the lumbering camps, and always have since I have been big enough to earn wages, most of my time.

(Testimony of Marion B. Watson.)

Q. What is that?

A. Most of my time; I have worked at other work a little, but not a great deal.

Q. And how long have you been in Idaho?

A. I came there, I think it was about the 10th of last May.

Q. You have been there about a year now, then?

A. Just about, yes, sir.

Q. And did you take your wife and boy with you?

A. No, sir.

Q. Where did you leave her?

A. She is in Oregon.

Q. In Oregon? A. Yes, sir.

Q. What is she doing there?

A. She isn't doing much of anything; she isn't able to do anything.

Q. Who is she living with?

A. She is living at her mother's.

Q. At her mother's? A. Yes, sir.

Q. And what is the name of her parents?

A. Harrill.

Q. Where is your father and mother?

A. I couldn't say. I don't know where they are; I have not heard from them for a couple of years.

Q. So you have been off alone in Idaho?

A. Yes, sir.

Q. How old are you?

A. Well, sir, I am most 37.

(Testimony of Marion B. Watson.)

Q. Most thirty-seven?

A. Yes, sir, the sixth of this month.

Q. And previous to your moving to Idaho, where did you live, in Montana?

A. I lived on the Blackfoot river about four miles above Mr. Griswold's.

Q. And were you living there at the time that you moved to Idaho?

A. No, sir, I went from there to Dodds, and from there down to Missoula; I worked there a while.

Q. Worked for the Dodds?

A. Yes, sir, in the lumber camp; I went from Missoula down there.

Q. What Dodds?

A. Well, Allen Dodd, I believe, was running the camp; he is a man that I used to know here.

Q. Working out by the day for Allen Dodd?

A. Yes, sir.

Q. Did you know the whole family of Dodds, Harrison, Matilda and Lizzie Dodd? A. Yes, sir.

Q. You know them all?

A. All that was there, I couldn't say as to any others.

Q. And what were you doing for the Dodds?

A. I was driving team.

Q. Driving team there? A. Yes, sir.

Q. Well, have you got any real estate, Marion?

By Mr. WALSH.—We object to that upon the ground

(Testimony of Marion B. Watson.)

that it is not proper cross-examination, and that it is irrelevant and immaterial.

A. No, sir.

Q. Or any personal property of any value?

By Mr. WALSH.—We object to that upon the ground that it is not proper cross-examination, and that it is irrelevant and immaterial.

A. No, sir.

Q. Did you have any in 1899—at the time you took up these claims?

By Mr. WALSH.—We object to that upon the ground that it is not proper cross-examination, and that it is irrelevant and immaterial.

Q. Answer the question, Marion, please?

A. I had a team of horses.

Q. In 1899? A. Yes, sir.

Q. Had a team of horses? A. Yes, sir.

Q. Did your wife, Katie, have any property of her own? Did she own any land that you know of—I mean other than this claim that she took up?

By Mr. WALSH.—We object to that upon the ground that it is not proper cross-examination, and that it is irrelevant and immaterial.

A. Any excepting that?

Q. Yes, sir.

A. No, sir, not as I know of.

Q. Yes, sir, that is what I mean; did she have any personal property?

(Testimony of Marion B. Watson.)

By Mr. WALSH.—We object to that upon the ground that it is not proper cross-examination, and that it is irrelevant and immaterial.

Q. Answer the question, Marion, please.

A. No, sir.

Q. How old is your wife?

A. Well, I wouldn't say positively, but I think she is about twenty-nine.

Q. Now, do you mean? A. Yes, sir.

Q. How long have you been married to her?

A. About eleven years.

Q. Eleven years; have you any children?

A. One, yes, sir.

Q. One child? A. Yes, sir.

Q. Where is the child now?

A. With its mother.

Q. With its mother? A. Yes, sir.

Q. How old is your mother, Harriet Watson?

A. I think she is somewheres about fifty-five; I wouldn't be positive as to her age.

Q. And your father is Doc. E. Watson, is he not?

A. Yes, sir.

Q. And how old is he?

A. Well, I couldn't say just as to his age, how old he is; he is about sixty-five or sixty-six.

Q. Well, your father and mother were—where were they living at the time that they took up their claims?

A. They were living right near me.

Q. How many brothers and sisters have you?

(Testimony of Marion B. Watson.)

A. I have two sisters and no brothers.

Q. What was your father doing at the time?

A. When he took the claim?

Q. Yes, sir.

A. He wasn't doing anything just at that time.

Q. Has he any business or trade or occupation?

A. No, sir.

Q. How has he made a living?

A. Nothing, only a common laborer.

Q. A common laborer, did you say?

A. Yes, sir.

Q. Who was he working for at the time you took up these claims? A. He wasn't working for anyone.

Q. What kind of a—was he boarding or living in a rented house?

A. No, sir, he had a house of his own that he built.

Q. Squatted on some Government land?

A. No, sir.

Q. Well, what kind of land was it?

A. Well, you might say that the school section—I was living on it.

Q. You squatted on that?

A. We were living there; that was the camp; the lumbering camp.

Q. And how long had you known Mr. Griswold at this time?

A. Well, I got slightly acquainted with Mr. Griswold just after I came to the State of Montana.

Q. And how long has that been?

(Testimony of Marion B. Watson.)

A. That was in 1898.

Q. In 1898, did you say? A. Yes, sir.

Q. Did you just move into this State in 1898 or 1897? A. Eighteen ninety eight.

Q. Where did you come from?

A. From Oregon

Q. From Oregon? A. Yes, sir.

Q. And did you come directly from Oregon to the Blackfoot country?

A. No, sir; went from Oregon to Tacoma, Washington.

Q. I mean when you settled in Montana.

A. I left Tacoma, Washington, and then came here to Montana.

Q. Settled in the Blackfoot country?

A. Yes, sir.

Q. Whereabouts—and then you became slightly acquainted with Mr. Griswold?

A. Yes, sir, I met him the first time I ever went by his place.

Q. The first time you ever went by the place you met him? A. Yes, sir.

Q. And when was that?

A. That was in 1888—in 1898, I mean.

Q. Now, then, you said to my brother on the other side, that you heard that Mr. Griswold was taking up land and you went to see him about it?

A. No, sir, I did not.

(Testimony of Marion B. Watson.)

Q. What did you say?

A. I said that I heard that he was looking timber lands.

Q. And you went to see him?

A. No, sir, I did not go to see him.

Q. Well, what did you do?

A. I met him right on the road where I live.

Q. I didn't understand your last answer, Mr. Watson.

A. I said I met him on the road, right near where I was living.

Q. Well, was he—what was he doing?

A. He was coming along the road on horseback.

Q. On horseback? A. Yes, sir.

Q. In which direction was he going, going towards his home? A. I think he was.

Q. And you were going towards your home?

A. I was right at my home.

Q. What did you say?

A. I was right at my home, right on the road that runs right by the house.

Q. And you were right at your own home?

A. Right near there, yes, the road runs right by the house.

Q. What were you doing?

A. I wasn't doing anything but just walking along, looking at the river.

Q. Well, did you speak to him first? A. I did.

Q. What did you say to him?

(Testimony of Marion B. Watson.)

A. I asked him about the timber land, and he said he was looking up unsurveyed timber land. I spoke to him about a timber claim, and he said he wasn't hunting timber claims, but that if I wanted to take a timber and stone claim, he knew where I could get a loan of the money to make final proof, if I didn't have it myself.

Q. How did you happpen to speak to him at that time about taking up a timber claim?

A. Well, I understood that he was looking up timber claims, and I had heard of timber claims being taken up several years ago, but I had never taken up any myself.

Q. What is that?

A. I had never taken one myself.

Q. And that is the reason that you spoke to him at that time about your taking up a claim under the Timber and Stone Act? A. Yes, sir.

Q. And what did he say?

A. He said that if I wanted to take up a timber and stone claim, he knew where I could get the money to make final proof if I didn't have it myself.

Q. Well, Mr. Griswold had known you for more than a year at that time, had he not?

A. Yes, about a year, I guess.

Q. You had lived within four miles of him?

A. Not all of that time, no, sir.

Q. Well, he knew very well that you didn't have any money to buy land with?

A. I couldn't say why he knew that.

(Testimony of Marion B. Watson.)

Q. You couldn't say how he knew that you didn't have any money to buy land with?

A. No, I couldn't see why he knew that I didn't.

Q. Well, you didn't have any money to buy it, did you? A. No, sir.

Q. Well, wasn't he well enough acquainted with you to know that, Mr. Watson?

A. I don't know why he should know it; I don't see why he should know it.

Q. Well, did you select your own locations?

A. I went and ran out the lines of my own claim and found the corners.

Q. How long after this conversation occurred?

A. I couldn't say positively; just a few days.

Q. How far was it from your home?

A. It seems to me it is about four miles from where I was living at the time.

Q. What is that?

A. About four miles from where I was living at that time.

Q. And was your mother and your father and your wife's locations near by?

A. My wife—my father's was; my mother's was not, and my wife's was not; they are on the opposite side of the river, on the south side.

Q. On the other side of the river?

A. Yes, sir, my father and my claim are on the north side.

Q. Your two claims adjoin?

(Testimony of Marion B. Watson.)

A. I couldn't say as to that now, whether they did or not.

Q. Did your mother's and your wife's adjoin?

A. I don't recollect.

Q. You don't recollect about that?

A. No, sir, I do not.

Q. Well, how do you know about these descriptions being open for location?

A. You mean for those claims?

Q. Yes, sir.

A. Finding out how they was vacant?

Q. Yes, sir, how did you find that out?

A. Mr. Griswold gave me a plat of the claims, and I went and hunted it up. I told him I didn't know anything about where I could find the claim, and he gave me a plat so I could find my claim, if I wanted one.

Q. Was that true also of the three other claims?

A. No, sir, only one of them.

Q. Which one was that? A. My father's.

Q. Your father's and your own claims were made at the suggestion of Mr. Griswold, he giving you the plats, and telling you about them?

A. No, sir, he gave me the plats of the country and I went up and located the land myself and hunted it up.

Q. Did he tell you that these descriptions were open for location?

A. No, sir, he told me that I might possibly find a claim in there, and I did.

Q. He didn't go with you?

(Testimony of Marion B. Watson.)

A. Not at that time.

Q. How long a time after that did he go?

A. Well, he went in a very short time; I don't recollect just how long it was; it wasn't only a few days.

Q. That is, your father's and your mother's—your own and your father's claim? A. Yes, sir.

Q. What did he go for?

A. Well, sir, I didn't ask him.

Q. Who went with—who was with you except Mr. Griswold? A. My father.

Q. Anybody else? A. No, sir.

Q And you don't know why Mr. Griswold went along with you? A. No, sir, I do not.

Q. Do you know what you did?

A. I know that I found a claim for myself and my father there; he didn't tell me his business in going; he wanted to go and he went, I suppose.

Q. He wanted to go along with you, and he did go?

A. Yes, sir.

Q. And now you say you don't know what he went for? A. I never asked him.

Q. Are you able to say what he did after he got there?

A. Nothing, only he looked over the timber, as near as I could see.

Q. He looked over the timber on both claims?

A. Yes, sir.

Q. And did he afterwards go with you to your wife's and your mother's claim on the other side of the river?

(Testimony of Marion B. Watson.)

A. Yes, sir.

Q. How long afterwards?

A. I couldn't say positively just when, but it was just a short time.

Q. Who was in the company at that time?

A. I and Mr. Griswold and my wife and my mother.

Q. Had they been there before; had your wife and mother been on their claims before?

A. Yes, sir.

Q. When? A. Just after we found them.

Q. That is, they went up there a second time with Mr. Griswold.

A. Yes, sir, we were up together, all four of us.

Q. And what did Mr. Griswold do there then?

A. Well, he didn't do anything that I could see.

Q. Didn't he do the same—

A. He walked around while I was showing my wife and my mother their claims.

Q. He examined the timber on these two claims, as he did the timber on your claim and your father's?

A. I suppose so; I suppose I saw what he was doing. I didn't ask him any questions because I didn't think it was any of my business.

Q. Didn't think it was any of your business.

A. No, sir.

Q. Now then, do you say that you selected those two claims without Mr. Griswold telling you of them?

A. I selected those claims and went and hunted them out myself.

(Testimony of Marion B. Watson.)

Q. From plats that Mr. Griswold gave you?

A. No, sir, only the one claim; only the claims for I and my father.

Q. How were you able to hunt them up yourself?

A. Well, if a man knows anything about timber, if he finds the corners of one section, or the township, it isn't hard to find others.

Q. Well, how do you know that they were open for location? A. Well I was only told so.

Q. Who told you that?

A. I think Mr. Griswold did; I am not positive; I think he told me they were vacant.

Q. Well, then, what was next done? You went shortly thereafter down to Helena to file on them, did you not? A. Yes, sir.

Q. And how did you go?

A. I went to Missoula with a team, and from there on the train.

Q. Who went with you?

A. My wife and my mother.

Q. Why didn't your father go at the time?

A. Well, we couldln't all leave home at the same time.

Q. Your father went later? A. Yes, sir.

Q, Had you seen Mr. Cobban up to this time?

A. No, sir.

Q. Did you ever see him before you got to Helena?

A. No, sir.

Q. You went to Missoula? A. Yes, sir.

(Testimony of Marion B. Watson.)

Q. When did you first see Mr. Cobban?

A I think it was some time in August; sometime in August I met Mr. Cobban.

Q. And that was the first time you ever saw him?

A. Yes, sir.

Q Well, was that before or after you had filed?

A. That was after I had filed, quite a bit.

Q. Quite a bit after you had filed?

A. Yes, sir.

Q. When I say "you", I mean yourself and wife and mother. A. Yes, sir.

Q Where did you meet him?

A. I think it was in Missoula that I met him the first time; I am not positive, though.

Q. But you are sure it was after your return from Helena, and after you had filed? A. Yes, sir.

Q. Did anyone—was there anyone else in your party at the time you went to Helena?

A. Besides us three?

Q. Yes, sir. A. I don,t remember.

Q. Did Mr. Griswold go along with you?

A. It seems to me he did, but I wouldn't say positive whether he did or not; I think he did.

Q. Well, now, Marion, refreshing your recollection, and thinking as hard of it as you can, and recollecting the circumstances, don't you remember distinctly that Mr. Griswold did go with you at that time?

A. I think Mr. Griswold went with us.

Q. He met you at Missoula, did he not?

(Testimony of Marion B. Watson.)

A. Mr. Griswold, do you mean?

Q. Yes, sir. A. I think so.

Q. Then you, and your mother and sister drove down with a team from your home to Missoula, and you left your team there? A. Yes, sir.

Q. And met Mr. Griswold as Missoula, and after that he came on with you to Helena? A. Yes, sir.

Q. Now, Mr. Griswold paid your railroad expenses, did he not? A. No, sir.

Q. What? A. No sir.

Q. Didn't he advance the money to pay your railroad fares? A. No, sir.

Q. Who did pay your expenses?

A. We paid them ourselves.

Q. From whom did you get the money?

A. Mr. Catlin.

Q. From Mr. Catlin?

A. Yes, sir, I got the loan of the money from Mr. Catlin, through Mr. Griswold.

Q. Through Mr. Griswold. Now, Marion, please explain to me just what you mean by that.

A. Well, Mr. Griswold said at the time I spoke to him about the timber and stone claim, that he knew where I could get a loan of the money if I didn't have it myself, and so I got this money from Mr. Catlin as a part of the loan.

Q. What did you say?

A. I got this money from Mr. Catlin when I made my final proof.

(Testimony of Marion B. Watson.)

Q. What is that?

A. When I made my final proof, I got this money from Mr. Catlin as a part of the loan, when I made my final proof on my claim.

Q. That is, it stood on the same basis as the money you got when you paid for the land?

A. The same as the balance that I got for the loan.

Q. Well, now, Marion, when you stated to me a few minutes ago that you didn't see Mr. Cobban until after you had proved up—I mean until after you had filed—

A. I didn't see Mr. Cobban until after I had filed.

Q. Yes, and it is further true that you went with Mr. Griswold to Mr. Cobban's office, when you met him in Missoula?

A. Well, I didn't know whether it was Mr. Cobban's office at that time or not.

Q. Well, you know now, don't you, that it was?

A. Yes, sir.

Q. And you found out that very shortly after you returned from Helena the first time?

A. Well, I couldn't say when I did find it out.

Q. Well, now, had you ever seen Major Catlin, before Mr. Griswold took you to the office?

A. I had never met Mr. Catlin before, no, sir.

Q. You were introduced to him by Mr. Griswold, were you? A. Yes, sir.

Q. And then you say that you received money enough to pay for the expenses in going to Helena?

A. I got the loan of the money, yes, sir.

(Testimony of Marion B. Watson.)

Q. And how much did you receive?

A. I think about thirty-five dollars.

Q. You think about thirty-five dollars?

A. Yes, sir.

Q. And did you and your mother and wife and Mr. Griswold take the train shortly thereafter for Helena?

A. We all went together.

Q. To Helena? A. Yes, sir, the four of us.

Q. Well, now, was this thirty-five dollars paid to you; did you receive the currency? A. Yes, sir.

Q. And you bought the tickets? A. Yes, sir.

Q. For the four of you?

A. For three of us.

Q. For three of you? A. Yes, sir.

Q. Then, just what did you do, please, Marion?

A. Well, we went into the land office and filed on our claims the next morning.

Q. Filed on your claims the next morning?

A. Yes, sir, the next morning after we got into Helena. I think it was somewheres about midnight when we got in there.

Q. How long have you been acquainted with a man by the name of Stephen Tepper, at that time?

A. Stephen Tepper?

Q. Yes, sir.

A. I wasn't acquainted with anyone by that name.

Q. Do you know a man by the name of Tepper?

A. I suppose I knew him; if I knew where he was

(Testimony of Marion B. Watson.)

living or what he was doing, I could tell you; but I don't recollect.

Q. Well, do you know of a Mr. Bryan, Thomas B. Bryan? A. That is Tom Bryan, is it?

Q. Yes, sir. A. Yes, sir.

Q. How long have you know him?

A. Before this?

Q. Yes, sir, before this?

A. I had never got acquainted with Mr. Bryan, that I know of; I don't recollect.

Q. What is that?

A. I don't recollect of meeting Mr. Bryan before this.

Q. Well, how long after you filed did you meet Mr. Bryan?

A. I think when I made final proof; I think it was.

Q. When you bought your land?

A. When I made final proof on my claim.

Q. You think that was the first time that you met Mr. Bryan?

A. I wouldn't say positive that that was the first time, but it seems to me that it was the first time that I met him, to get acquainted with him; I wouldn't say positive; I live not far from him. Whether that was the time that I first got acquainted with him or not, I couldn't say.

Q. Well, you knew a man by the name of John Gillies, didn't you? A. Yes, sir.

Q. You knew him? A. Yes, sir.

Q. How long had you known him?

(Testimony of Marion B. Watson.)

A. Well, I never was acquainted with Mr. Gillies only a short time.

Q. You were acquainted with him a short time?

A. Yes, sir.

Q. When was that, please?

A. I think that was along in the summer of 1900 that I got acquainted with him, in 1900—I should say 1899.

Q. What did you say?

A. In 1899, I think it was, that I got acquainted with him.

Q. Where was he?

A. I think the first time I recollect of meeting Mr. Gillies, he was running a stopping-house on the Clearwater that Mr. Griswold used to run.

Q. Well, now, when you were at the land office with your wife and mother and Mr. Griswold, you filed on the land and gave the descriptions in? A. Yes, sir.

Q. And then after that you returned back home, did you not? A. Yes, sir.

Q. And went up into the Blackfoot country?

A. Yes, sir.

Q. And did you stay there during the sixty days?

A. Where, at home?

Q. Yes, sir.

A. No, sir, I wasn't right at home all the time.

Q. Well, I mean working up there?

A. I was working around some, yes.

Q. How many times during this intervening time

(Testimony of Marion B. Watson.)

and before you returned to Helena by way of Missoula, were you in Missoula?

A. I don't understand your question.

By the EXAMINER.—He means between the time you filed and the time of final proof.

A. Between the time of filing and the time of making final proof?

Q. Yes, sir.

A. I was in Missoula, I couldn't say how many times, but I was in there several times.

Q. Why did you go there?

A. Well, I was down there trading, for one thing.

Q. When did you see Mr. Cobban?

A. I think it was in August, some time, that I met Mr. Cobban.

Q. Well, it was between those two dates, wasn't it?

A. Yes, sir, between the time that I made my filing and the time that I made final proof.

Q. And who was with you?

A. When I met Mr. Cobban?

Q. Yes, sir.

A. I met Mr. Cobban, I think, when Mr. Griswold and him were having a conversation.

Q. What were you doing there?

A. I went there to see Mr. Griswold.

Q. And you saw Mr. Griswold? A. Yes, sir.

Q. Saw him at Mr. Cobban's office?

A. Yes, sir.

(Testimony of Marion B. Watson.)

Q. You saw him there at Mr. Cobban's office?

A. I saw Mr. Griswold there, yes, sir.

Q. And he introduced you to Mr. Cobban?

A. I couldn't say whether he did or not.

Q. But when you met Mr. Cobban there—when you met Mr. Griswold there, that was the first time that you had ever seen Mr. Cobban, was it not?

A. I rather think it was.

Q. And how long were you there?

A. Well, I couldn't say as to that. I wasn't there but a short time.

Q. Did you leave Mr. Griswold there in the office?

A. I couldn't say as to that, whether I did or not.

Q. Do you remember of his going away with you?

A. No, sir.

Q. Well, how many times after that did you see Mr. Griswold and Mr. Cobban there in the office?

A. Well, I couldn't say just how many times I saw them; I saw them at different times; I couldn't say how many.

Q. Well, how many times would you say?

A. Well, I wouldn't say, because I am not positive how many times I did see them.

Q. Well, was it four times?

A. I couldn't say as to that.

Q. Well, was it two times?

A. I couldn't say as to that.

Q. So that the only time that you have a clear recollection of seeing Mr. Cobban and Mr. Griswold together

(Testimony of Marion B. Watson.)

was when you went to the office to see Mr. Griswold, and was then introduced to Mr. Cobban by Mr. Griswold?

A. I don't recollect whether I was introduced by Mr. Griswold or not at that time, the first time I met Mr. Cobban.

Q. Well, you had no business with Mr. Cobban, did you? A. No, sir.

Q. Didn't have, at any time between the time of your filing and ofter you had proved up?

A. None with Mr. Cobban whatever from the time I filed up until the time I made final proof.

Q. Yes, sir. What business did you want to see Mr. Griswold on when you went to Mr. Cobban's office?

A. At that time I was doing some work for Mr. Griswold.

Q. What work was it?

A. I was looking for unsurveyed timber lands.

Q. In the Blackfoot country? A. Yes, sir.

Q. And that was all the work that you was doing for him?

A. That was all the work that I was doing for Mr. Griswold, yes, sir.

Q. And, as I understood you to say to my brother, you only worked for him about a week.

A. I think it was something like about eight days.

Q. About eight days? A. I think so.

Q. And can you recall in what month this eight days' work was performed?

A. It was in August, some time.

(Testimony of Marion B. Watson.)

Q. In August? A. Yes, sir.

Q. And just what was the nature of that work?

A. Well, sir, I was running out lines with a compass.

Q. What did you say?

A. I was running out lines with a compass.

Q. That is, you were surveying some lands?

A. Well, I was running out some lines over unsurveyed land, as near as I could run them out.

Q. The subdivision of land into forties, eighties and a hundred and sixties? A. Yes, sir.

Q. Did you know for what purpose you were doing it?

A. No, sir.

Q. Do you know what Mr. Griswold wanted it done for? A. No, sir.

Q. And you didn't know for whom you were working at that time?

A. For whom he was working? I was working for Mr. Griswold.

Q. You don't know for whom he, Mr. Griswold, was working at that time? A. No, sir.

Q. You never did hear, did you?

A. Well, I found out afterwards that he was looking up unsurveyed timber.

Q. Who for?

A. Well, I couldn't say as to that, whether I ever heard who he was working for, or anything of the kind.

Q. Do I understand you to say that you now testify that during that entire season you didn't know who Mr. Griswold was working for?

(Testimony of Marion B. Watson.)

A. I might have, but I don't recollect of having any conversation to anyone.

Q. And you don't recollect that you ever heard that he was working for Mr. Cobban?

A. Nothing more than hunting timber—unsurveyed timber lands, I think I heard about that.

Q. You think you heard about that?

A. Yes, sir.

Q. And that was all?

A. That was all, yes, sir.

Q. That was all that you heard or knew, or understood in any way that he had any dealings with Mr. Cobban? A. Yes, sir.

Q. Well, do you remember the circumstances of your coming a second time to Helena, at the time you filed—proved up?

A. I knew I was going there to prove up.

Q. And your wife and your mother went with you?

A. Yes, sir.

Q. And went in substantially the same way as you did before, did you not—that is, you went down to Missoula by wagon, and left your wagon there and took the train? A. Yes, sir.

Q. And Mr. Griswold was with you at that time?

A. Yes, sir.

Q. And came on to Helena, in addition to you four?

A. I don't remember who was along; I don't recollect.

Q. Well, did Mr. Cobban come along?

(Testimony of Marion B. Watson.)

A. I couldn't say whether he did or not; I don't recollect who was along now.

Q. Well, did you get your money to pay your railroad expenses and hotel expenses to Helena the second time, the same as you did before?

A. When I went to prove up on the claim?

Q. Yes, sir.

A. We got the loan of the money that we was to get.

Q. And did you go with Mr. Griswold to Mr. Catlin's office again? A. Yes, sir.

Q. How much money did you get?

A. I don't recollect now; I didn't get it myself then; Mr. Griswold got it.

Q. Mr. Griswold got it, you say? A. Yes, sir.

Q. Money enough to pay for the three descriptions?

A. Yes, sir.

Q. You got money enough, also, to pay the expenses of the trip, did you not?

A. I couldn't say.

Q. You think you did?

A. I couldn't say as to that.

Q. You have no recollection of paying out any money yourself, have you, for expenses at that time?

A. Well, I generally always paid.

Q. Well, did you then?

A. When I am in town I always spend money if I have got it.

Q. Did you then?

A. Pay out any money towards expenses?

(Testimony of Marion B. Watson.)

Q. Yes, sir. A. Yes, sir.

Q. What money was it? A. My own money.

Q. For what did you expend money?

A. Well, I couldn't tell you just what I did spend it for.

Q. Who bought the railroad tickets?

A. We got our own tickets.

Q. Who paid for them? Can't you answer the question, Mr. Watson? A. I don't recollect now.

Q. Well, the next day you went to the land office with Mr. Griswold, and made your final proof, did you not?

A. Went the next day after we got to Helena, yes, sir.

Q. And Mr. Griswold paid this money for the land into the land office, did he not? A. Yes, sir.

Q. You hadn't seen either Mr. Catlin or Mr. Cobban, had you? A. I saw Mr. Catlin.

Q. The second time? A. Yes, sir.

Q. And what did he say to you?

A. Well, after we got the balance of the money to make final proofs from Mr. Griswold.

Q. That is, he told you that he had given the money to Mr. Griswold to pay for the land?

A. Well, he didn't tell me anything of that kind, that I know of, just exactly.

Q. Well, you say that Mr. Griswold got the money?

A. Yes, sir.

Q. And paid it into the land office? A. Yes, sir.

Q. Did you give Mr. Catlin a mortgage?

A. No, sir.

(Testimony of Marion B. Watson.)

Q. Did you give him a note?

A. No, sir, not at that time.

Q. So you went on in that way and bought your land?

A. Yes, sir.

Q. And your wife's and your mother's also?

A. Yes, sir.

Q. And you are unable to say as to whether Mr. Cobban went along with you or not?

A. I couldn't say whether he did or not; I don't remember who was along.

Q. You stopped at the Cosmopolitan Hotel, did you not? A. Yes, sir.

Q. Did Mr. Griswold take you there?

A. We went ourselves; we got into a cab at the depot and rode up to the Cosmopolitan Hotel.

Q. With Mr. Griswold?

A. I couldn't say whether Mr. Griswold went along with us or not, but it seems to me that he did.

Q. Now, do you remember what took place at the land office, Marion?

A. Nothing more than to make final proofs on our claims. That is all I recollect of.

Q. And you knew at the time that you had to have a publication of the notice, didn't you, and had to have witnesses? A. When we made filings?

Q. Yes, sir. A. Yes, sir.

Q. And had to have witnesses? A. Yes, sir.

Q. Well, now, who did you name as witnesses?

A. Well, I couldn't say who was named.

(Testimony of Marion B. Watson.)

Q. Oh, did you leave the matter to somebody? Who did you leave that matter to, Marion, the naming of the witnesses, and seeing that it was properly published in the newspaper and paying for it?

By Mr. BICKFORD.—We object to this for the reason that the rules of the Department and the rules of the general land office which have heretofore been read into the record, in this case, show that it is the duty of the register and the receiver to attend to the publication of the notices for the final proof, and so on, and therefore, the question is irrelevant and immaterial, and it is not proper cross-examination.

By the EXAMINER.—You can answer the question.

A. We named our own witnesses.

Q. You named your own witnesses? A. Yes, sir.

Q. And who did you give?

A. I have forgotten who it was, now. I never paid much attention to that, because I didn't think it was necessary to remember that.

Q. What is that?

A. I didn't think it was necessary for me to remember anything of that kind all my life.

Q. Can you remember if you had anything to do with that at all—in any way?

By Mr. WALSH.—We object to this because it is indefinite, and the term "to do it with" does not convey any idea to the witness.

(Testimony of Marion B. Watson.)

Q. Have anything to do with the publication of the notices or the naming of the witnesses?

By Mr. BICKFORD.—He has answered that question as to the naming of the witnesses, and he said that they named their own witnesses.

Q. But you cannot remember who they were?

A. No, sir, I don't remember just who they were.

Q. Well, can you remem'ber that you did anything else besides that? A. No more than—in what way?

Q. In regard to the paying for the publication.

A. I don't recollect now.

Q. Well, do you remember when the witnesses were named, Mr. Watson, by you?

A. They was named on the day that we made our filing.

Q. And who were they named by?

A. We named our own witnesses.

Q. Well, weren't they named by Mr. Griswold?

A. No, sir.

Q. They were not named by him? A. No, sir.

Q. You think you named them yourself, then?

A. I don't think so, I know it.

Q. Your wife and mother had nothing to do with it?

A. Yes, as I said before, they named their own witnesses.

Q. Well, you did it for them, did you not?

A. No, sir.

Q. Didn't you have charge of that business?

A. No, sir, it wasn't none of my business to name their witnesses; I named my own.

(Testimony of Marion B. Watson.)

Q. Well, weren't the same witnesses named in each case?

A. I couldn't say as to that whether they were or not; I don't remember who were the witnesses for each party.

Q. Well, if you didn't know Mr. Bryan until—and have no recollection of meeting him until you proved up, how could you name him as a witness upon your final proof?

By Mr. BICKFORD.—We object to that for the reason that the witness has not said that he named Mr. Bryan, and it is not proper cross-examination.

Q. Do you know Mr. Bryan?

A. I don't recollect now who the witnesses were.

Q. Well, if as a matter of fact Mr. Bryan was one of the witnesses, and you hadn't met him until you proved up, and didn't know there was such a man, how could you name him as a witness sixty days before?

A. I didn't say I had never met Mr. Bryan; I don't know as I had; I don't recollect of meeting him; I don't know just when—

Q. When did you name him as a witness?

A. I don't recollect when I did get acquainted with him; I don't recollect that; I couldn't say.

Q. I read from the record in this case, from Volume 5, on page 2462, the testimony of Mr. George D. Greene, register of the land office at Helena, and I show the witness the page, and ask him to follow me.

"Q. Who was the next one, Mr. Greene?

(Testimony of Marion B. Watson.)

"A. The next one, I think, is Cash Entry 6203, by Marion B. Watson.

"Q. When was the sworn statement filed?

"A. July 17th, 1899.

"Q. For what land?

"A. It was for the southeast quarter of section 2, in township 15 north, range 14 west.

"Q. And who were the witnesses advertised to appear in support of the claim of this man?

"A. C. L. Griswold, Stephen Tepper, John Gilles and T. B. Bryan."

Now, I ask you if, with the acquaintance that you have sworn to as having with Mr. Bryan and Mr. Tepper, and John Gillies, how you came to name them as witnesses?

A. Well, I don't know just when I got acquainted with them. I was a stranger with most everyone up in that country, but I got acquainted with almost everyone. They are names that I do not remember.

Q. You have no recollection of having met Mr. Bryan until you met him there in Helena, at the time he was your witness, and how do you account for the fact?

A. I don't know when I did get acquainted with Mr. Bryan. I didn't say I had never met him.

Q. Well, how did you come to name him as a witness? How do you account for the fact that Mr. Bryan's name appears there as a witness for you?

A. Well, I suppose he was a witness, and I suppose I knew him; I suppose I got acquainted with Mr. Bryan.

(Testimony of Marion B. Watson.)

Q. And referring further to the testimony of Mr. Greene, on the same page, I read as follows:

"Q. And who were the witnesses that were examined there?

"A. Mr. Thomas Bryan and C. L. Griswold were the witnesses who appeared."

And the question is further asked the witness, as follows:

"Q. On that final hearing were the questions in the same form and the testimony to the same effect as the other witnesses that you have testified to?

"A. Yes, sir.

"Q. And were the answers the same?

"A. Well, to the same practical effect. Of course there is some variation in all of these cases.

"Q. The testimony that you speak of, were they the same matters in substance, rather than in form?

"A. Matters of form rather than in substance."

By Mr. WALSH.—We move to strike out the testimony read by counsel, upon the ground that it has no place here in the record, and is argumentative, and we have not reached the argument of the case yet, and it is duplicating the testimony.

Q. Well, after this work was completed and your—the money was paid into the land office by Mr. Griswold for yourself and your wife and your mother, you on that same day, you met him at the Cosmopolitan Hotel?

A. Yes, sir, I saw Mr. Griswold that same day.

(Testimony of Marion B. Watson.)

Q. And that was in a very short time after you went to the land office?

A. I couldn't say as to that, just how long it was; I met Mr. Griswold, though, that same day. I seen him several times; I met him on the street and I met him at the hotel.

Q. And you went to—your wife and mother were present with you at the hotel?

A. The three of us were stopping there at the hotel, yes, sir.

Q. And you went with him that same day to the law office of Mr. Reeve, did you not?

A. I couldn't say whether it was that day or whether it was the next morning.

Q. Well, be that as it may, on that same day or the next morning?

A. I couldn't say which it was; I don't remember.

Q. Well, I will show you—I will read from the same page as before.

"Q. Now, with reference to this entry, when was the final receipt issued? A. September 28th, 1899.

"Q. And that was the date of the final proof?

"A. Yes, sir."

Q. Do you see that, Mr. Watson? A. Yes, sir.

By Mr. WALSH.—We move to strike out the question of the counsel and the answer of the witness, and we object to it for the reason that it is not proper cross-examination.

(Testimony of Marion B. Watson.)

Q. I show the witness Complainant's Exhibit No. 187, and also Complainant's Exhibit No. 184, and I will ask him to read the date on the top line of this exhibit.

By Mr. WALSH.—No, no, you needn't mind doing that, Mr. Watson. We object to that for the reason that it is not proper cross-examination.

Q. Very well. I read from the exhibit the following: "This indenture made this 28th day of September, A. D. one thousand eight hundred and ninety-nine, between Marion B. Watson and Katie E. Watson, of Bonner, Missoula County, Montana, the parties of the first part, and R. M. Cobban, of Missoula, the party of the second part," and the date of the execution and acknowledgment also appears to be the 28th day of September, 1899.

By Mr. WALSH.—We move to strike out the statement of counsel for the reason that it is the declaration of counsel and not a question propounded to the witness, and it is not proper cross-examination.

Q. And the same dates and figures are in the exhibit, No. 184.

By Mr. WALSH.—We move to strike out the statement of counsel for the reason that it is the declaration of counsel and not a question propounded to the witness, and it is not proper cross-examination.

Q. Now, then, what have you to say as to whether or not you went on the same day, Mr. Watson?

A. Well, I couldn't recollect whether it was or not. Of course this deed is given—this date in the deed is the

(Testimony of Marion B. Watson.)

same date, but I couldn't say whether it was the same day or the next morning, as I said before.

Q. Well, you remember of executing the deed that I have shown you, do you not?

A. Yes, sir.

Q. You don't know this notary public on this deed, do you?

A. No, sir, I wasn't acquainted with him.

Q. And you—Mr. Griswold took you to his office, didn't he?

A. I don't know as he took us to the office.

Q. Well, you went with him, didn't you?

A. Yes, sir.

Q. And there these deeds were signed and executed by you and your wife and mother? A. Yes, sir.

Q. You didn't see them drawn up there, did you?

A. Yes, sir.

Q. What did you say?

A. I think so, I couldn't say.

Q. You couldn't say whether they were drawn up there or not by Mr. Reece, or handed to Mr. Reece already prepared?

A. I think they were drawn up right there; I am sure they were.

Q. What?

A. I am sure they were drawn up right there.

Q. Do you mean to say that you are willing to swear that the date—that the deed of which this certified copy is—that the deed if which this is a certified copy,

(Testimony of Marion B. Watson.)

was drawn there by Mr. Reece in your presence, and you saw him do it? A. Yes, sir.

Q. And the same with your wife and your mother?

A. Yes, sir.

Q. You saw him draw three deeds and all of them?

A. Yes, sir.

Q. Well, how long were you there?

A. Well, to that I couldn't answer; I don't know how long we were there; I didn't keep any time; I don't know how long we were there.

Q. Who were present besides Mr. Reeve and Mr. Griswold and you three?

A. I couldn't say whether there was anybody, or who there was, or how many. I didn't take down any number or the counting of anyone.

Q. Well, where did you go after you had executed these deeds?

A. Went back to the hotel—the Cosmopolitan.

Q. Who did you go with?

A. My wife and my mother, after we got through our business there.

Q. And who else?

A. Just us three, I think.

Q. Did Mr. Griswold go with you?

A. I wouldn't say whether he walked down to the hotel with us or not.

Q. Whom did you deliver these deeds to?

A. Mr. Griswold.

(Testimony of Marion B. Watson.)

Q. Gave them to Mr. Griswold? A. Yes, sir.

Q. And whether he walked down with you to the hotel or not, he met you at the hotel after the delivery of these deeds by you? A. Yes, sir.

Q. And he paid you then in currency—in cash, in the Cosmopolitan Hotel, the sum of three hundred dollars, did he not?

A. He paid us the sum of five hundred and fifty dollars apiece, taking out the money that we had got as a loan—deducted that out.

Q. He deducted it out before he paid it to you?

A. Yes, sir.

Q. How much did you actually receive from him in cash?

A. It seems to me it was about a hundred dollars.

Q. A hundred dollars apiece?

A. I think so.

Q. Yes, and then you went home and the transaction was closed up so far as you were concerned, was it not? A. Yes, sir.

Q. Now, then, in the light of this testimony that you have given, you are prepared to testify that the receiving of this hundred dollars apiece for yourself and your wife and your mother, was without any understanding whatever which had existed between you and Mr. Griswold, that when you did make your final proof, as you have testified, that you were to receive this hundred dollars?

(Testimony of Marion B. Watson.)

A. No, sir, we never made any bargain or agreement with anyone.

Q. And you never heard anything about the sum that you were to receive? A. No, sir.

Q. And you didn't know who you was to sell to?

A. No, sir, not until after we had made final proof.

Q. And you was—had no knowledge of any kind, or understanding or agreement, express or implied, in any way, that you were to do this thing which you did do?

By Mr. WALSH.—Wait a moment. We object to that.

Q. —a little later to sell to Mr. Cobban?

By Mr. WALSH.—Do you want to substitute that language, "which you did do?"

By Mr. MAYNARD.—I put that in as the last part of the question.

By Mr. WALSH.—We object, then, to his answering anything further than the last part of the question, namely, as to his agreeing to sell to Mr. Cobban, and we object to his answering the part of the question ending, "doing this thing that you did do."

A. No, sir.

Q. And you didn't know how much you were going to receive for your land?

A. Not until after we made final proof, and Mr. Griswold came to me and was talking to me, and asked

(Testimony of Marion B. Watson.)

me if I wanted to sell our claims, and said that he knew where we could sell them, and that he would buy them, and he said what he would give us, and we talked the matter over, the three of us, and decided to sell our claims and to take that price, but he didn't say who was going to buy it, or who wanted to buy it, at that time.

Q. Well, when did you first find out who was to be the buyer, after you got up into the lawyer's office?

A. When we went to make out the deeds?

Q. And then he told you who was to buy the land?

A. Who the deed was to be made out to?

Q. And that is the first time you ever heard Mr. Cobban's name mentioned in the case, is it?

A. Yes, sir.

Q. And that he was the purchaser?

A. Yes, sir.

Q. Or that he was to buy it?

A. That is the first time I heard anything about Mr. Cobban buying the claims.

Q. And during that entire—during all these weeks and months that had preceded this, you hadn't heard from any source that Mr. Cobban was buying this land—buying lands that were located in the same way that you and your wife and your mother had located them, and deeded for a hundred dollars over and above the expenses? A. No, sir.

Recess taken until two o'clock P. M. same day.

Saturday, May 3d, 1902, 2 o'clock P. M.

Hearing resumed pursuant to adjournment.

MARION B. WATSON, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. I call your attention to Complainant's Exhibit No. 182, being the certified copy of the deed of Doc. E. Watson and Harriet Watson to R. M. Cobban. Were you present when that deed was executed?

A. I am not positive whether I was or not; I could not say; I am not sure.

Q. You knew about the circumstance of your father taking up land, did you not? A. Yes, sir.

Q. I wish you would please state what those circumstances were?

A. Well, that he taken up a claim just the same as I did.

Q. He could not leave home; there is where we parted company with him; he did not go on to make the filings with you because he could not leave home, you testified? A. Yes, sir.

Q. And after you returned, do you remember of his going to Helena for the purpose of filing?

A. Yes, sir.

Q. Did you go with him? A. No, sir.

Q. Who did go with him, if anyone?

A. I could not say; I don't know who did.

Q. You were present at the time that he made his final proof, were you not?

(Testimony of Marion B. Watson.)

A. Well, I am not sure whether I was or not; I could not say.

Q. Have you any recollection of that fact?

A. No, sir, I could not say whether I was or not, no.

Q. Didn't you know that you were a witness for him?

A. Well, I don't remember; I never kept track of anything that way, and I don't remember.

Q. You don't remember as to whether you went to Helena with your father or not at the time he made his final proof?

A. It seems to me I was in Helena, but I did not go with him.

Q. What were you doing there?

A. Well, I couldn't say to that now, what I was there for. If I was a witness on his final proof, to be sure I was there.

Q. Do you now say that you don't remember whether you were there or not at the time?

A. I could not say. It seems to me—

Q. And if you were there you don't know how you got there? A. Yes, I know how I got there.

Q. You went on the cars, I suppose?

A. The biggest portion of the way, I did.

Q. But you could not say why you went there?

A. Well, I don't remember; if I was a witness on his final proof, more than likely I was there when he made his final proof.

(Testimony of Marion B. Watson.)

Q. But who asked you to go there to be a witness you don't know? A. No, sir.

Q. Well, do you remember of having been to Helena during that season of 1899 except on two occasions when you went there to file and prove up?

A. I don't recollect, unless I was a witness on his final proof.

Q. And if you were that would be another time?

A. Yes, sir.

Q. Would that be all the times that you have any recollection of having been in Helena during the year 1899?

A. I don't remember now the number of times that I was at Helena.

Q. Have you any recollection of having been there on any time except the two times that you yourself went there upon your own business to file and prove up, and the third time when you might have been there as a witness for your father?

A. I don't remember how many times I was in Helena.

Q. As a matter of fact, weren't you there a number of times other than those that you have named?

A. It seems to me that I was out there, yes, sir.

Q. Have you no recollection why you left your home in the woods up in the Blackfoot and made the pilgrimage to Helena during that season?

A. I suppose I went out there as a witness on D. E. Watson's claim when he made final proof.

(Testimony of Marion B. Watson.)

Q. Why do you suppose that?

A. Well, from my recollection, it seems to me that I was there.

Q. Have you any recollection of having been there as a witness at the time that final proof was made on any other entries? A. Yes, sir.

Q. You do now have a recollection?

A. Yes, sir.

Q. In how many cases?

A. Well, I don't recollect that, just how many; I can't remember.

Q. Can you recall any of them?

A. Well, I don't remember who it was for.

Q. You have no recollection on that subject?

A. It seems to me that I was called as a witness on some of the Dodds' claims.

Q. Don't you know that you were?

A. I rather think I was.

Q. When did that come to your mind?

A. Well, I don't know when it did.

Q. Didn't you know when I first commenced the examination on this branch of the case, didn't you know then that you were in Helena as a witness in the final cases of the Dodds.

A. I wasn't studying nothing about that.

Q. Now, you are able to say that you were?

A. I was a witness on some of the claims, yes, for the Dodds.

Q. Can you name the number?

(Testimony of Marion B. Watson.)

A. There was eight of them, I think.

Q. Can you give their names?

A. No, I don't know as I can give their names.

Q. Well, give as many of the eight as you can.

A. Well, I might give it and give it in a different way from the way they signed their names.

Q. Well, you identify them by the way that you know them.

A. Well, there is Ed Dodd and Harrison Dodd and Cora Dodd.

Q. That is four. A. And Hiram Dodd.

Q. That is five.

A. And Lan Dodd. I don't think that is the way he gives his name when he signs it, and more than likely none of the rest of them, either, but that is all of them that I know that I can give their names that I know them by.

Q. Now, then, how did it happen that you went to Helena as a witness at the time the final proofs were made in these cases?

A. I suppose they had my name published as a witness; that is all I know about it.

Q. And you went because you supposed they had your name published as a witness?

A. Well, I was notified that my name was published as a witness.

Q. Who notified you?

A. Well, I see the publication in the paper.

(Testimony of Marion B. Watson.)

Q. And that is the way you received the notification?

A. Yes, sir.

Q. And no other way?

A. Well, it seems to me that some of them said something to me about going.

Q. How many times did you go?

A. I suppose I was a witness on the eight claims; I think I was.

Q. How many of them gave proof at the same time?

A. I couldn't say to that.

Q. Who paid you for going?

A. The ones that I went for?

Q. How much did you receive?

A. Well, I don't remember the amount that I received.

Q. They paid your expenses?

A. Yes, I suppose they did; they were the ones that paid me the money.

Q. The Dodds paid you the money, did they themselves? A. I think so.

Q. Themselves? A. I think they did.

Q. Or through Mr. Griswold?

A. Well, I couldn't say to that just how that was, because I was not inquiring into anything of that kind; I got my pay, and that was all I wanted for my time.

Q. And whether you got your pay that way from Mr. Griswold or from them, you don't know?

A. I couldn't say.

(Testimony of Marion B. Watson.)

Q. Didn't you know for what purpose these Dodds were making their entries? A. No, sir.

Q. Had no talk with any of them in regard to the matter? A. No, sir.

Q. Now, you are sure of that, that you had no talk with any of the Dodds in regard to this subject matter of taking up claims under the Stone and Timber Act?

A. No, sir.

Q. And stating to them and how much they could make out of the location of land in making entries after final proof?

A. No, sir that was none of my business.

Q. Didn't you ever see any of them in regard to the matter or talk with them at all on the subject?

A. No, sir.

Q. And of course you don't remember at all of seeing the Dodds at their home and telling them about the matter, and that as the result of that conversation you had with them they started off and made filings?

A. No, sir.

Q. Now, isn't it true, sir, that at this time you were in the employ of Mr. Griswold? A. I was not.

Q. Isn't it true that you made the location of these claims under his instructions and by his directions?

A. No, sir.

Q. And that he sent you to Helena to become a witness for these people and that he paid you for it.

A. No, sir, I don't recollect of anything of the kind.

(Testimony of Marion B. Watson.)

Q. But you are unwilling to swear but what he did pay you? A. Mr. Griswold?

Q. Yes.

A. I couldn't say whether he did or not.

Q. If, as a matter of fact, he did pay you for going to Helena as a final witness, why did he do that?

A. I could not say whether he did or not.

Q. Well, if he did; you say you don't know whether he did or not; now, I am asking you if he did, why did he do that?

A. Well, I don't know whether he did.

Mr. BICKFORD.—We object to that as not proper cross-examination, calling for a reason of some other person than the witness rather than for a fact.

Q. Will you swear that he did not pay you for going there, and give you all the money that you received as a witness in these cases?

Mr. BICKFORD.—We object, that he has asked that three times in succession already.

Mr. MAYNARD.—What do you understand his answer to be?

Mr. WALSH.—He has answered you straight that he does not know whether Griswold paid him or not; everybody in the room seems to have understood the witness.

Q. Did you or did you not have a talk with Mr. Griswold on that subject? A. No, sir.

Q. You did not have any talk? A. No, sir.

(Testimony of Marion B. Watson.)

Q. And you had no talk with any one Dodd in regard to the matter? A. No, sir.

Q. I show you the testimony from the record in volume V, on page 2293, in the testimony of Allen Dodd, and his signature on page 2391, and his oath, "Subscribed and sworn to before me, the 16th day of March, 1902, Henry N. Blake, Examiner in Chancery," I read now from page 2293.

"Q. Did you at that time have any real or personal property? A. No, sir, not to speak of.

Q. Who first spoke to you about making this filing?

A. I believe it was Mr. Watson that spoke to me about it.

Q. Doc Watson? A. Marion Watson.

Q. What relation is he to you?

A. Well, my brother married his sister.

Q. Whereabouts were you when he spoke to you?

A. I was at home.

Q. Did he come there? A. Yes, sir.

Q. Who was present?

A. I don't remember; quite a number.

Q. Name as many as you can.

A. Oh, there was my father and mother and Marion Watson and my brother Harrison; I don't remember that they were all present, but they were around there.

Q. Did Marion Watson give the information to the number that were gathered there?

A. I don't remember.

Q. It was at this time and place you heard of it?

(Testimony of Marion B. Watson.)

A. Yes, sir.

Q. And from what you heard at that time and place from Marion Watson, was that what led you to make this entry?

A. Yes, sir, that was the first I heard of it."

Mr. BICKFORD.—I now move to strike out the statement of counsel as being a repetition of the testimony already given, and as having no bearing upon the case, and as being an unnecessary encumbrance of the record to have the same testimony twice.

Q. Now, I ask you as to whether or not, having heard this testimony of Alan Dodd as to the conversation that he had with you as I read from the record with you, as to whether or not you are now prepared to say that you never had any conversation with him on the subject?

Mr. WALSH.—We object to that question, because the question is indefinite and conveys no idea to the witness at all, the subject not being expressed in the question.

Q. On the question of making the filings under the Stone and Timber Act?

Mr. WALSH.—Now, you have got a question.

A. No, sir, I had none at all.

Q. You had no conversation with him?

A. No, nothing of that kind.

Q. Didn't you at that time and place, while you were working for Mr. Griswold, who was working for Mr.

(Testimony of Marion B. Watson.)

Cobban, and in obedience from the instructions which you had received from him—

A. Mr. Griswold—I was not working for Mr. Griswold at that time.

Q. Had you been working for him?

A. No, sir, no then.

Q. You worked for him afterwards?

A. Afterwards, yes, sir.

Q. And you had no conversation with Mr. Griswold that there was a chance for you and your wife and your mother and father and all your relatives to go and take up these claims under the Stone and Timber Act for Mr. Cobban, and he would pay $100 and expenses?

A. No, sir, I did not.

Q. And now you say that having heard this testimony of Dodd's that you did not have any talk with him on the subject, as he says?

A. No, sir, nothing to that effect.

Q. Well, what effect—did you have a conversation at all at the time and place that he fixes?

A. Not that I remember of; no, sir.

Q. And you have no recollection now of having said anything to your relatives about this matter?

A. No, sir; I did not.

Q. Have you any recollection of going with Allen Dodd and putting him on a claim?

A. No, sir; I did not locate him on no claim.

Q. You did not go with him at all?

A. Yes, I was with him in the hills.

(Testimony of Marion B. Watson.)

Q. For what purpose?

A. Well, sir, he wanted to know if I could show him any any timber, and I told him I didn't know whether I could or not, and he asked me questions, and I don't just recollect what they were, and he went up home with me and I showed him some timber and I showed him where the lines was.

Q. Then, as a matter of fact, you did—

A. He looked over the timber himself.

Q. You did point out to Allen Dodd a piece of land upon which timber was growing and run the lines for him?

Mr. WALSH.—He has not denied that yet.

Q. Did you? A. Yes, sir.

Q. For what purpose did you do that?

A. Just for accommodation more than anything else; I wasn't getting no pay from him nor anyone else. He didn't promise me to pay for any kind of work like that.

Q. Didn't you locate the other Dodds that you have reference to?

A. I showed them the timber just as I did Allen Dodd; what they wanted it for I did not know; I never asked them; it was none of my business.

Q. Did you take them all at once?

A. I don't remember whether I did or not.

Mr. WALSH.—He has not testified that he took any of them. We object to the question for that reason, it

assumes a fact as established that has not even been testified to.

Q. How many did you take?

Mr. WALSH.—We object to that for the same reason.

A. I could not say how many I taken all or went with at one time.

Q. Were there four or five of them?

A. Something like that.

Q. And where did you take them?

A. I taken them on the south side of the Blackfoot river, from where I live.

Q. How far from where you live?

A. Well, I don't recollect that; I don't remember the distance it was from where I live.

Q. But you do remember that you pointed out the land upon which the timber was growing and ran the lines for them? A. Yes, sir.

Q. And that was without anybody's hiring you to do that? A. Yes, sir.

Q. Nobody paying you?

A. No, sir; I wasn't hired by nobody at that time.

Q. Did you ever receive any pay for anybody for it?

A. Yes, sir.

Q. Who paid you? A. C. L. Griswold.

Q. How much did he pay you?

A. He paid me $120.

Q. How did he come to pay you $120 for this work if, as a matter of fact, at the time you did it you had no conversation with him in any way about doing it?

(Testimony of Marion B. Watson.)

A. No, sir; I did not.

Q. How did he come to pay you then?

A. I understood about the time I made final proof or some time about then, that Mr. Albert Jemison was getting paid for claims. I asked Mr. Griswold in the Cosmopolitan Hotel in Helena, after I made my final proof on my claim if he thought it was right that he should pay me anything for those claims, and he allowed it was, and it went on that way for quite a while, and I talked to him about it several times, and he always kept putting me off, and he said it was right that I should have pay for it, and he promised to settle with me, and the evening he did, he started for Pennsylvania, and so I didn't see him any more for a number of days; he was gone, and during the time he was gone, I explained the case to an attorney, and put it in his hands, and sued Mr. Griswold, and I got my pay.

Q. You sued Mr. Griswold? A. Yes, sir.

Q. Where did you sue him? A. In Missoula.

Q. What attorney's hands did you place it in?

A. I don't remember the attorney's name; at that time it was a partner of J. I. Denny's; I don't remember the man's name now.

Q. How was it, on what theory was it, Marion, that you sued him?

A. He promised to pay me the money and he would not do it, and it looked to me as though he didn't intend to, after he allowed it was right that I should have pay for it.

(Testimony of Marion B. Watson.)

Q. Why was it right that you should receive pay from him?

A. Well, I couldn't tell you that; I just asked him that question and he told me that he thought it was right that I should have pay.

Q. Did you think it was right that he should pay you?

A. I understood from Albert Jemison that he was getting pay for it, and Mr. Griswold was paying him, and if he didn't want to pay me or had refused to pay me at the time I first spoke to him, I wouldn't have said nothing about it, but he allowed it was right that I should have pay?

Q. For the services that you had rendered?

A. For those claims that I had looked over the timber.

Q. And that the Dodds' took up?

A. Yes, sir, they taken the claims up.

Q. Hadn't you made final proof on it at that time?

A. No, sir.

Mr. BICKFORD.—I think the witness does not understand the question; I don't understand myself when you say, "that time;" what time do you refer to?

Mr. MAYNARD.—At the time that he was having this conversation with Griswold and making a demand for his services.

Mr. WALSH.—He didn't make any demand for his

(Testimony of Marion B. Watson.)

services; he made a demand because Mr. Griswold availed himself of some services he had rendered to the Dodds; that is what he has testified to.

Q. And after you brought suit against Griswold, he paid you this money? A. Yes, sir.

Q. One hundred and twenty-five dollars?

A. One hundred and twenty dollars.

Q. Now, what was the basis of that?

Mr. WALSH.—He has already answered that question. You need not answer.

Q. Was that on the basis of $10 apiece of each location? A. Yes, sir.

Q. That was twelve locations that you claimed?

A. Yes, sir.

Q. There were the eight Dodds, yourself and your wife and your father and mother? A. Yes, sir.

Q. Now, did that cover the $120 payment or did you reckon your expenses in that, in going to Helena as a witness for these people? A. No, sir.

Q. That was just for the pure services?

A. Yes, sir, that he told me that he thought it would be right that I should get pay.

Q. Now, then, previous to making these locations for these eight Dodds, you had had a conversation with Albert Jemison in regard to the matter, had you not?

Mr. WALSH.—We object to that because the witness has expressly stated that he did not make any

(Testimony of Marion B. Watson.)

locations for any Dodds, and it is not fair to put those questions to this witness; it is not fair to enter into a controversy of that character with a witness like the one on the stand.

Mr. MAYNARD.—He has charged $10 each for each one of these locations and received the money, and now you have got the nerve to say that he did not make the locations.

Mr. WALSH.—Read the question.

(Question read.)

Mr. WALSH.—Now, I want to ask the counsel if the witness has not positively denied making any locations for any Dodds?

Mr. MAYNARD.—I say positively that he has made locations.

Mr. WALSH.—But he denied making them, did he not?

Mr. MAYNARD.—Yes, but then he says he has right afterwards.

Mr. WALSH.—He says he showed them the timber.

Mr. MAYNARD.—Well, that is the same as making the locations.

Mr. WALSH.—Why don't you ask him the question?

Q. Previously to—

Mr. WALSH.—No, no, read the last question. One at a time.

(Testimony of Marion B. Watson.)

The EXAMINER. (After the question was read.) Answer that question in your own way.

A. I had never located any Dodds.

The EXAMINER.—Now, go on with the other part of the question.

The WITNESS.—And I had not had any conversation at that time that I know of with Mr. Albert Jemison.

Q. Did you ever have any conversation with Albert Jemison in regard to the matter?

A. Nothing more than he told me that Mr. Griswold gave him $10 a claim, I believe—something to that effect; that is why I spoke to Mr. Griswold after I made my final proof.

Q. And didn't he tell you further that he would see to it if you would get these claims you would receive from Mr. Griswold the same amount that he was getting, namely, $10 apiece?

A. No, sir, he did not.

Q. And didn't you by reason of what Albert Jemison told you, make the demand upon Mr. Griswold which you swear that you did, and get the $120 from him?

Mr. WALSH.—One moment; he has not sworn that he made any demand on Mr. Griswold at all, and we object to the question for that reason.

Mr. MAYNARD.—He made such a demand—

(Testimony of Marion B. Watson.)

Mr. WALSH.—On the contrary, his testimony is that Mr. Griswold himself said that he would pay it to him.

Mr. MAYNARD.—He made such a demand from him, what I call a demand, that he asked him if it was not right that he should be paid for those services, and Mr. Griswold said that he would pay him.

Mr. WALSH.—We don't call that a demand in this country.

Mr. MAYNARD.—Afterwards, when he delayed about paying him, he sued him; if that is not a demand, I don't know what you call a demand.

The EXAMINER.—Let the witness answer the question in his own way.

A. I asked Mr. Griswold if he thought it was right that I should have any pay for it, and he allowed it was and said he would pay me.

Q. And after you sued him he did pay you?

A. Yes, sir.

Q. Now, then, you know now that you did have a conversation with these Dodds in regard to their taking up land under the Stone and Timber Act?

A. No, sir, I did not.

Q. You know, as a matter of fact, that you did take them to the land and point out the land upon which this timber was growing and run the lines for them?

A. I showed them the land that the timber was on and ran some lines out for them.

(Testimony of Marion B. Watson.)

Q. And you know, as a matter of fact, that they did file on those lands?

A. Yes, they filed in the land.

Q. And you know, as a matter of fact, that you did go to Helena and appear as a final witness for them, did you not? A. I did.

Mr. WALSH.—All of this appears to have been testified to before.

Q. And he gave you $120 for making the locations, and you might have got your expenses from Mr. Griswold? A. I didn't make any locations.

Mr. WALSH.—We object to this because the whole thing has been answered. You need not mind answering that.

Q. You did get $120 from him? A. Yes, sir.

Q. And you might have got your expense money in going to Helena from him?

A. I know nothing about that at all.

Q. You have no memory on that subject?

A. No, sir.

Redirect Examination.

(By Mr. BICKFORD.)

Q. I will ask you to state, Mr. Watson, when it was that you had this talk with Albert Jemison with reference to the time that you made your own timber and stone entry; was it before or after that time?

(Testimony of Marion B. Watson.)

A. It was after I made final proof on my claim, I think; I am not sure.

Q. When was it with reference to the entry that you showed the Dodds this land that you speak of?

A. It was after I was to Helena and made filings on my timber and stone claim.

Q. Then, as a matter of fact, they made their entries after you made yours? A. Yes, sir.

Q. Now, what was it that you did for the Dodds—what were the services that you performed, what did you do for them?

A. I showed them where the timber was and ran out some lines.

Q. Now, that was about all you did, was it?

A. Yes, sir.

Q. You had to go, though, from the place where you were living or the place where you stopped on to this land to show it to them; you went with them?

A. Yes, sir.

Q. Now, you have testified, I believe, that you were a witness in some of these cases where the Dodds had made timber and stone entries. When you went to the land office to act as a witness for them, why did you go as a witness?

A. Well, I see the publication in the paper, that I was a witness for them, and when the time came for them to make final proof, if I remember right, I think some of them said something to me about going.

(Testimony of Marion B. Watson.)

Q. And wasn't it on account of the fact that you knew the land and the character of it?

A. Yes, sir.

Mr. MAYNARD.—I object to that question as leading and as entirely improper redirect examination.

Q. You became acquainted with the land and the character of it at the time when you went upon the land with the Dodds' to show them the land, did you not? A. Yes, sir.

Q. Now, at the time when you went to Helena to make your final proof, you had testified that there was nothing said about the sale of the land until after the time when you had made your final proof, and that then you made a bargain for the sale of your land and the deeds were prepared. I will ask you to state now what you know or what you actually remember about the preparation of those deeds, Mr. Watson?

A. Nothing more than I supposed they were made out there, made out there according to the writing they were doing.

Q. Have you any distinct recollection that anybody did write them out in your presence?

Mr. MAYNARD.—Objected to as leading and suggestive and not proper redirect examination. This witness has positively sworn that these deeds were made out in his presence.

(Testimony of Marion B. Watson.)

Mr. WALSH.—Oh, no, he has not.

Mr. MAYNARD.—And I now object to his counsel trying to lead him in other directions.

Mr. WALSH.—Counsel for defendant simply differs from counsel for the Government as to his having positively testified to anything of the kind.

Mr. MAYNARD.—I assert it as a positive fact, that he did positively so swear.

The EXAMINER.—Read the quesiton.

(Question read.)

A. No, sir.

Q. Then, please state what your recollection is as to what was done at the time when you went before the notary public to acknowledge the deed?

Mr. MAYNARD.—I object to that question because the same ground has been gone over, the same questions asked and positively answered, and that it is clearly an effort on the part of counsel for this man to make him modify and change that which he has already positively sworn to.

Mr. BICKFORD.—We differ with the gentleman as to what he has positively sworn to.

Mr. MAYNARD.—Thank God, the record shows it.

Mr. BICKFORD.—We hope the record shows exactly what was said.

(Testimony of Marion B. Watson.)

Mr. MAYNARD.—That is my protection against such efforts.

The EXAMINER.—Answer the question.

A. Well, I don't recollect very much about it, any more than we signed the deeds.

Q. At the time when you went as a witness for these people upon their final proof, you remember to have given your testimony, I suppose before the land office, do you? A. Yes, sir.

Q. Well, at the time when you gave that testimony you endeavored to tell the truth, did you?

A. Yes, sir.

Mr. MAYNARD.—I move that that question and answer be stricken out as entirely incompetent recross-examination of a man's own witness; the record speaks for itself, and it cannot be added to or subtracted from by any averment which he now makes in support of it.

Recross-examination.

(By Mr. MAYNARD.)

Q. Mr. Watson, then in regard to these deeds that were signed by you and your wife and mother in Reese's office in Helena, you are not prepared to swear but what they were already written out and prepared and ready for your signature at the time you went into the office?

A. I supposed that is what they were doing; I did

(Testimony of Marion B. Watson.)

not know—I supposed they were making out the deeds; that is what I supposed at the time that they were doing; they were doing quite a bit of writing there.

Q. But you don't know whether they were made out or not?

A. I am not positive, no, sir.

Q. And therefore they might have been made out in Missoula and sent up there?

A. I couldn't say positive to that, where they was made out.

MARION B. WATSON.

Subscribed and sworn to before me this —— day of May, 1902.

HENRY N. BLAKE,
Standing Master in Chancery and Examiner.

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

THE UNITED STATES OF AMERICA,
Complainant,
vs.
WILLIAM A. CLARK,
Defendant.

Certificate of Master in Chancery.

To the Judges of the Above-entitled Court:

I do herby certify that under the order of said court, made and entered in said cause upon the first day of Oc-

tober, 1901, and in pursuance of the stipulations and agreements of the above-named parties, I continued to take the testimony therein, in my office, in the city of Helena, in said District; that George H. Macdougall, and Charles B. Cooper, heretofore appointed stenographers, to take the testimony of the witnesses in shorthand and transcribe the same, did so take and transcribe said testimony; that R. M. Cobban was called as a witness, and appeared personally before me, and was duly sworn to testify to the truth, the whole truth, and nothing but the truth, and was examined by counsel for the respective parties, and his testimony is contained in this volume, which is numbered nine, on pages 4,921 to 5,501, inclusive; that said Cobban carefully read, corrected, subscribed and verified his testimony before me at the time hereinafter mentioned.

At the request of the parties the deposition of the defendant, William A. Clark is contained in this volume. Exhibits numbered 316 to 343, inclusive, described in the index hereto are herewith filed.

Dated July 23, 1902.

HENRY N. BLAKE,

Standing Master in Chancery and Examiner.

Circuit Court of the United States, Ninth Circuit, District of Montana.

UNITED STATES, Complainant,

vs.

W. A. CLARK, Defendant.

Testimony for the Defense.

Be it remembered that at an examination of witnesses begun and held pursuant to stipulation on the 20th day of May, 1902, personally appeared before me, S. C. Mills, a notary public, in and for the District of Columbia, personally appeared before me the within-named William A. Clark, who being produced as a witness for and in his own behalf, and being first duly sworn and cautioned to tell the truth, the whole truth and nothing but the truth touching the matters at issue in the above-entitled cause, did depose and say as follows:

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

UNITED STATES,

vs.

WILLIAM A. CLARK,

On this, the 17th day of May, 1902, being the date appointed by agreement of the respective parties at the city

and county of New York, and the State of New York, personally came the parties above-named by their respective counsel, and in pursuance of an agreement which is hereto attached, and made a part hereof, and it appearing by this statement of the witness, William A. Clark, the defendant herein, that his official engagements are such that the hearing of this cause and the taking of the testimony herein cannot now be had.

It is hereby agreed by and between the respective counsel that said hearing shall be adjourned until Tuesday, the 20th day of May, 1902, to be resumed before S. C. Mills, at his office at 1316 Fourteenth street, N. W., Washington, D. C.

It is further stipulated that Edmund Harvey, 50 Wall Street, New York, shall be and is hereby empowered to certify these proceedings under his hand and seal, and send to the said S. C. Mills, at 1316 14th St., N. W., Washington, D. C., the proceedings had herein, and shall forward by express to the said S. C. Mills, all of the exhibits, which are now in his possession, and which pertain to this cause, and that the report so made by the said Edmund Harvey shall be received by the Master in Chancery appointed in said above-entitled cause, and shall be reported by him to the court as a part of the proceedings in this case in the taking of the testimony herein.

It being understood and agreed that upon the making of the foregoing stipulation and the forwarding of the exhibits aforesaid, that the duties of Edmund Harvey shall cease.

The foregoing stipulation was made and entered into in my presence, and in testimony hereof I have hereunto

affixed my hand and seal, this 17th day of May, A. D., nineteen hundred and two.

[Seal] EDMUND HARVEY,
Notary Public, Kings Co., N. Y.

Certificate filed in New York Co., N. Y.

STIPULATION.

Circuit Court of the United States, District of Montana.

UNITED STATES,
Complainant,
vs.
W. A. CLARK,
Defendant.

It is stipulated by the solicitors for the respective parties herein that the testimony of William A. Clark, the defendant, a witness in his own behalf, may be taken in the city of New York before Edmund Harvey, a notary public in and for the city and county of New York, Royal Insurance Company Building, 40 Wall street, New York, on Saturday, the 17th day of May, 1902, at 12 M., or as soon thereafter as the same can be taken. If after one day has been spent in the taking of such testimony or in the effort to take the same and it shall not be concluded or taken as the case may be it shall then be continued to a later day as the parties may then agree. In case, however, the official duties of the defendant shall so demand, the further taking of such testimony may be continued in the city of Washington, D. C., before S. C. Mills, a notary public in and for said city and District, at 503 D street, Northwest, at a day and hour to be agreed

upon by the counsel herein. It is further stipulated that the taking of testimony before Honorable Henry N. Blake, Examiner herein, be now adjourned for three weeks from this day, and in case either party shall request a further adjournment of two weeks, the same shall be granted and the order made by the Examiner to that effect on his receiving such request either orally or in writing. The stipulations heretofore made as to time of the taking of the testimony on the part of the complainant and defendant in this case are to stand and be of the same effect as if this adjournment had not been taken.

It is further stipulated that all the time spent under this stipulation, other than that in the taking of defendant's testimony, shall not be counted in the time allowed to the defendant for putting in his proof.

It is further stipulated that upon the taking of said testimony, as hereinbefore stipulated, the same shall be returned to the Master under the hand and seal of the notaries before whom the same has been taken, and when so returned to the Master, it shall be by him filed and made a part of the testimony in this case and be regarded by him the same as if taken before the Master in person.

I, Henry N. Blake, the Standing Master in Chancery and Examiner of the above-entitled court, and Examiner in said cause, do hereby certify that the above is a full, true and correct copy of the stipulation this day made and entered before me in said cause.,

Dated this 9th day of May, A. D. 1902.

HENRY N. BLAKE,

Standing Master in Chancery and Examiner.

Circuit Court of the United States, Ninth Circuit, District of Montana.

UNITED STATES,

Complainant,

vs.

W. A. CLARK,

Defendant.

United States of America, } ss.
District of Columbia, }

May 20, 1902.

Tuesday, 8:30 o'clock P. M.

Met pursuant to the foregoing stipulation at the office of S. C. Mills, Esq., notary public in and for the District of Columbia, 1316 14th street, Northwest, Washington, District of Columbia.

Appearances: Fred A. Maynard, Esq., Special United States Attorney, appearing for the complainant; Walter M. Bickford, Esq., appearing for the defendant; and the notary public.

Whereupon, WILLIAM A. CLARK, being produced as a witness for and in his own behalf, and being first duly sworn, deposes and says:

(Testimony of William A. Clark.)

Direct Examination.

(By Mr. BICKFORD.)

Q. What is your name? A. William A. Clark.

Q. Where do you reside? A. Butte, Montana.

Q. I will ask you whether you are the defendant in this case? A. I am.

Q. Are you acquainted with one Robert M. Cobban, who formerly lived in Butte, Montana, and who now lives in Missoula? A. I am.

Q. How long have you known him?

A. I cannot say positively.

Q. You have known him for some years?

A. I think I have known him for about eight or ten years.

Q. Were you acquainted with Robert M. Cobban in the spring or summer of 1889? A. I was.

Q. I will ask you to state whether, at any time during the year 1899 or subsequent thereto, R. M. Cobban was your agent for any purpose?

A. He never was at any time.

Q. What do you know, if anything, of Robert M. Cobban having entered into any written contract with one C. E. Griswold, of Missoula, concerning the acquiring of title to lands of the United States?

A. I know nothing about it.

Q. What do you know, and what have you to say with reference to any knowledge you had at any time of Robert M. Cobban procuring title to public lands from the United

(Testimony of William A. Clark.)

States Government? Do you know anything concerning that matter?

A. I know nothing whatever of his procuring title to lands.

Q. I will ask you what, if any, transactions you had with Robert M. Cobban in the year 1899 with reference to the purchase of timber lands from him?

A. I made some purchases from him in the summer of 1899.

Q. Do you remember, and can you state, when it was that the first purchase was made by you from him?

A. I believe the first purchase was made in July, but I cannot state positively either as to the month or day.

Mr. BICKFORD.—I call your attention to Defendant's Exhibits No. 276 and 277 (handing witness exhibits) and ask you to state whether or no the deeds which I now hand you refer to the transactions concerning which I have enquired?

A. They refer to the transactions with Cobban.

Q. I will ask you to state whether or no the consideration mentioned in the deeds which you now hold in your hand is a true consideration for the conveyance of the lands mentioned therein?

A. They are true considerations.

Q. Will you kindly state how it happened that this transaction took place, giving as near as you can, the details which led up to the purchase of this land by you?

A. I do not recollect clearly the details of the negotiation that led up to the purchase of this land. It is

(Testimony of William A. Clark.)

my impression that this matter was first called to my attention by Mr. Wethey, my manager, and that it was placed before me for my consideration. I am not sure whether I wrote to Mr. Wethey about this matter or not, I am not positive about it, but it is my impression that I had a talk with him about it before the matter was closed.

Q. What was the nature of the talk you had with Mr. Wethey or Mr. Cobban with reference to the purchase of this land and what was the price you paid for it reckoned in thousand feet?

A. It appears that I agreed to pay $1.25 per thousand feet. I recollect that the price first mentioned was $1.50 per thousand feet which I considered too high and we then agreed upon $1.25.

Q. At the time these transactions were had between you and Mr. Cobban what, if anything, did he say to you with reference to his owning the land?

A. He said he owned the lands.

Q. What, if anything, have you to say with reference to the abstracts of title to this land sold you by Cobban?

A. I did not see the abstracts of title. They were presented to Mr. Wethey and I instructed him to submit them to my attorneys for examination to see if they were all right.

Q. Did you accompany that instruction to Mr. Wethey to the effect that unless the abstracts were perfect you did not care to purchase?

A. I did. I always do that.

(Testimony of William A. Clark.)

Q. In other words you exercised the ordinary precaution which is used by business men in transactions of this kind?

Mr. MAYNARD.—I object to the question as leading.

Q. Now, passing to the other transactions (witness is handed Defendant's Exhibits Nos. 278 and 279), I will ask you to refresh your memory from the exhibits which I have handed you and state when the next transaction took place in reference to your purchasing land from Mr. Cobban, if any such purchases took place?

A. These deeds represent the next transaction in Septemper, 1899.

Q. What is the date of the deeds?

A. September 16, 1899.

Q. I will ask you to state whether or no you have any recollection independent of the deeds themselves as to the date of this transaction?

A. Not positively. I know it was in the fall of 1899, but could not tell the exact date without looking at the deeds.

Q. Did the transaction take place at the time mentioned in the deeds? A. Yes, sir.

Q. Now, what have you to say, if anything, with reference to the ownership of the land described in those deeds at the time you purchased it from Mr. Cobban?

A. He represented that the owned the property.

Q. What have you to say, of your own knowledge, as to the manner in which Mr. Cobban acquired title to this land?

(Testimony of William A. Clark.)

A. I have no recollection as to having any knowledge whatever as to the manner in which he acquired title, but simply he was the owner.

Q. What was the consideration mentioned in the deeds that you now have in your hand and which are marked Defendant's Exhibits Nos. 278 and 279.

A. The consideration is one deed is $21,875 and the other $15,031.25. Both deeds are of the same date.

Q. What have you to say as to whether or not that was the true consideration for the lands purchased?

A. That was the true consideration and the only consideration.

Q. Through whom were these transactions conducted largely?

A. As representing me through A. H. Wethey, my manager.

Q. The deals were closed by Mr. Wethey?

A. Yes, sir, after the title had been passed upon by my attorneys.

Q. Who, as a matter of fact, made the bargain for the purchase of this land?

A. Mr. Wethey made the bargain although upon my instructions.

Q. I now hand you Defendant's Exhibits Nos. 283 and 284, and ask you to look at them for the purpose of refreshing your memory, and state when the next transaction occurred between you and Robert M. Cobban?

A. In deeds dated the 11th day of November, 1899,

(Testimony of William A. Clark.)

and the 13th day of November, 1899, there was certain property conveyed by Cobban and his wife to myself.

Q. What is the consideration mentioned in the deeds you now refer to?

A. In the deed dated November 11th, 1899, the consideration was $35,512.50; in the deed dated the 13th day of November, 1899, the consideration was $33,718.75.

Q. What have you to say with reference to that being the true and only consideration which was paid for the land mentioned in the respective deeds.

A. That was the consideration.

Q. At the time when this land was purchased, at the time when these deeds were executed, what have you to say as to it being an absolute sale of the land mentioned in the deeds or whether the deeds bore some other character of conveyance outside of what was described in the deeds themselves?

A. There was a contract in connection with these transactions whereby these deeds were to operate as mortgages for the security of the money loaned and there was an option to purchase given me.

Q. Can you, from your own recollection of the transaction, give us the terms of the agreement or option which you at that time had with Mr. Cobban?

A. I cannot state definitely from memory.

Q. I will ask you to state whether you have read the various letters which were read into the record as evidence in this case, shown you by me since my arrival

(Testimony of William A. Clark.)

in Washington, which were written by you and addressed to Mr. A. H. Wethey?

A. I have read several letters recently relating to these transactions.

Q. Now, I will ask you to state whether or no, whether the letter which you have read were written by you to Mr. Wethey in relation to these transactions?

A. They were.

Q. So far as you have read them what have you to say as to your intentions, wishes and ideas with reference to this transaction at the time these letters themselves were written?

Mr. MAYNARD.—Objected to on the ground that the letters themselves are the best evidence of what the Senator's views, intentions and ideas were.

A. These letters convey my wishes and instructions clearly with regard to these several transactions.

Q. Then I understand you to say that the deed dated November 13, 1899, and the deed dated November 11, 1899, while purporting on its face to be an absolute conveyance was in the nature of a mortgage to secure the amount mentioned therein?

A. They were to operate as mortgage securities for loans I had made.

Q. Will you kindly state what the ultimate end of the transaction was with reference to the option which went with the deeds at the time they were made?

A. I availed myself of the options which were given

(Testimony of William A. Clark.)

in the contract—collateral contract—a part of the amount was paid and the balance due.

Q. Do you now remember and can you state what proportion of the purchase price of these lands was loaned at the time these deeds were made?

A. There was a loan made of fifty cents per thousand feet on certain lands and seventy-five cents per thousand feet on other lands.

Q. Is it not a fact that fifty cents was advanced on titles for lands upon which forest reserve selections had been made?

A. That is my understanding of it.

Q. Then, as I understand you, the deeds which are dated respectively November 11 and 13th, 1899, represent the title which you received not at the time of the date of the deeds, but sometime after the date of them? Can you tell how long after the date?

A. No, I cannot.

Q. Were there any other transactions after the deeds of November 11 and 13th, 1899, which I have just mentioned? (At this point the witness is handed Defendant's Exhibits Nos. 280 and 281.)

A. There were two transactions on the 9th day of January, 1900.

Q. Please state what those were?

A. Deeds for certain timber lands. The consideration in one was $18,850 and in the other $9,481.25.

Q. What have you to say with reference to these deeds being absolute conveyances or whether there were

(Testimony of William A. Clark.)

other contracts or agreements given as an option upon the lands mentioned and being in the nature of a loan?

A. There were collateral contracts with these deeds operating as mortgages for the security of the money advanced.

Q. Did you afterwards exercise the right to purchase the land according to the option or agreement you had?

A. I did.

Q. Can you tell how long after the date of the deeds were made that this transpired? A. I cannot not.

Q. At the time these transactions took place, as I understand it, you were not present in Montana in person, were you? A. No.

Q. State whether or no the correspondence between you and your manager with respect to the translations mentioned explained the same?

A. It was considered and expressed in the correspondence between myself and Mr. Wethey.

Q. Now, I hand you Defendant's Exhibit No. 282 and ask you to state whether or no the paper I hand you represents any other transaction between you and Robert M. Cobban?

A. There was a conveyance dated January 26, 1900, from Robert M. Cobban and his wife to myself for certain property. The consideration was $4,931.25.

Q. Now, I will ask you to state whether or no that transaction was the close of a deal or whether it was an option to purchase?

(Testimony of William A. Clark.)

A. That deed, I think, had the same conditions annexed to it.

Q. Did you ultimately become the owner of the land?

A. Yes, sir; finally.

Q. I now hand you Defendant's Exhibit No. 297 and ask you to please state what, if any transaction, that paper represents?

A. That is a conveyance from Robert M. Cobban and his wife to myself, dated the 15th day of June, 1900, describing certain property conveyed. The consideration was $3,325.

Q. I call your attention to the letter dated October 20, 1899, and ask you to state whether or no there was ever, at any time, in pursuance with that letter, advanced or paid to Mr. Cobban any amount of money with which to make entries on lands for the purpose as acquiring title to the same?

A. I never, at any time, advanced money for the purpose of acquiring title.

Q. I ask you to state whether or no you know the property in the town of Missoula referred to as the Higgins Block? A. I do.

Q. Do you know that Mr. Cobban had purchased the Higgins Block in Missoula?

A. Mr. Cobban told me at one time that he had purchased the Higgins property.

Q. Did he ever ask to borrow from you any money for the purpose of using it in the purchase of the Hig-

(Testimony of William A. Clark.)

gins Block? Have you any recollection about that independent of the letter?

A. There was a conversation about that. I recollect of his telling me that he was about to purchase the Higgins property, but I cannot recollect the transaction.

Q. Did you ever have any connection or acquaintance with any of the entrymen or entrywomen who entered lands under the Timber and Stone Act?

A. None whatever.

Q. What have you to say with reference to having either employed men yourself or authorized anybody else to employ men for you for the purpose of entering lands under the Timber or Stone Act?

A. I never employed anyone for any such purpose.

Q. Did you ever authorize anybody to do it?

A. I never authorized anybody to do it.

Q. What have you to say as to having any contract of agreement with anyone to do it?

A. Never in my life made any such contract with anyone or authorized anyone to make it for me.

Q. Did you ever hear of any contract of that kind being made?

A. I never heard of any being made.

Q. What have you to say with reference to your knowledge of the manner of acquiring title to land you purchased prior to the time when actual proof had been made?

(Testimony of William A. Clark.)

A. I had no knowledge as to the manner of the acquiring of title to land.

Cross-examination.

(By Mr. MAYNARD.)

Q. These transactions between yourself and Mr. Cobban ranged over the years 1899 and 1900?

A. They did.

Q. Are you able to state how much of that time you were in Montana commencing with the year 1899—January?

Mr. BICKFORD.—I desire to state to the witness that he has a right to refresh his memory from the letters which are on file with reference to that matter if he desires so to do.

A. The first letter is dated May 29, 1899.

Q. Where is that from?

A. From New York. By the aid of these letters, which are all correctly dated, and localities stated, I think I can state definitely where I was during the time these contracts were made. Outside of that it is very difficult for me to tell. I was in New York May 29, 1899. June 9th and July 14th I was in Butte. I was in Butte, September 20th, October 10, 1899. October 11th, 12th, 16th, 20th and November 18, 1899, I was in New York. November 21st and 25th I was in New York. December 5th I was in Washington. December 13 and January 9th, 1900, I was in Washington. February 17,

(Testimony of William A. Clark.)

April 9, and April 27, 1900, I was in New York. May 2d, 1901, I was in Washington. May 6th to May 9th, 1900, I was in Washington. I was in Montana between Christmas and New Years of 1898. Two times in March, 1899, I was in Montana.

Q. At the time the legislature was in session?

A. Yes, sir. I have some memorandum-books from which I can give my itinery from the latter part of 1898 to the close of 1900, I think, pretty closely.

Q. You spoke of Mr. Wethey as your manager? He has held that position for a number of years, has he not?

A. Yes, sir; for a long period; I think ten or twelve years.

Q. As I understand it when you were here in Washington engaged in your official duties or in New York, he has charge of your affairs or business matters in Montana?

A. A certain part of my business. He has charge of my general business.

Q. This subject matter which we are now having under consideration would come under general business and he would have absolute charge of it?

A. Yes, sir; under my instructions, and, of course, with more or less discretion as to details.

Q. I notice in the letter you refer to dated May 29, 1899, you refer to this timber on the Big Blackfoot?

A. Yes, sir.

Q. Have you an independent recollection as to how

(Testimony of William A. Clark.)

long before that letter was written that your attention was first called to it?

A. The question of buying timber land?

Q. Yes, sir.

A. I cannot recall just when we bugun to buy Forest Reserve Scrip. I was interested in the lumber business some time before that having purchased some interests from other parties down in that region. Some months before that I purchased from Mr. McLaughlin some sawmills.

Q. Where were those sawmills located?

A. One located at Clinton in Missoula County and I think the other was down at Lothrop.

Q. Did you also have a lumber or sawmill at St. Regis?

A. I had purchased an interest from a man who had a sawmill at St. Regis. I am not sure that it was purchased at that time.

Q. You had also organized a western lumber company early in the year 1899, hadn't you?

A. I think it was organized early in 1899, but I am not sure about it.

Q. Well, either late in 1898 or the beginning or 1899?

A. I am not positive about it. It is a matter of record.

Q. Do you remember how much the capital stock of the lumber company was?

A. I am not positive, but I think fifty thousand dollars. It has been increased several times since then.

(Testimony of William A. Clark.)

Q What is it now?

A. Eighty-five thousand dollars, I believe.

Q. How much of that do you own?

A. That I cannot state positively. I think, probably, seven-eights or three-fourths at least.

Q. And that has been the proportion from the beginning has it not?

A. No, Mr. McLaughlin had some stock at one time that was purchased by me and then there are others interested. My son acquired an interest afterwards.

Q. There was no time that you had less than two-thirds of the capital stock?

A. I think I had more than two-thirds from the beginning; Mr. McLaughlin, Judge Bickford here and Mr. Wethey were small stockholders.

Q. Enough to make your company?

A. Yes, sir; enough to make directors.

Q. As a matter of fact, you bought from July, 1899, up to June, 1900, from Mr. Cobban 170,000,000 feet of lumber, did you not?

A. There was no transaction as late as June, 1899, was there?

Q. That is Mr. Wethey's testimony amounting in the aggregate to $217,571.25.

Q. For what different purposes did you want this lumber?

A. Well, I bought this lumber as I buy anything else because I need it. Because I believed that I might need it. I had contracts with the Big Blackfoot Milling Com-

(Testimony of William A. Clark.)

pany which were carried over. I had contracts with the Amalgamated Copper Company. Their contracts were a matter of a few months continuance. The relations betwen the Amalgamated people and myself at that time were not of the most cordial nature and as I was using large quantities of lumber and timber both for mining purposes and building purposes it was necessary for self-protection that I should look out for future supplies and looking forward to the increase of the lumber business it was very natural that I should desire to secure an ample supply of lumber.

Q. Do you use a large amount of lumber in your mining operations? A. I do.

Q. Is it absolutely essential to have timber to carry on your mines? A. It is, indeed.

Q. And I suppose you expected to carry on a general business in your lumber yards, didn't you?

A. That was the calculation. The larger the business the less proportionately are the costs. In order for me to get the lumber it was necessary for me to enlarge the business and go into it regularly.

Q Have you any personal recollection as to the amount you had on hand previous to the purchase of these mills?

A. We were getting it on contract for delivery as we required it and planned for lumber generally ahead as far as we could to meet our requirements from time to time.

(Testimony of William A. Clark.)

Q. You did not have much on hand?

A. We did not carry a very large supply at any of the lumber yards.

Q. As you proposed to go into it extensively, considering these various ways in which you could use the timber you wanted to get a large supply of it?

A. Yes, sir.

Q. You had known Mr. Cobban for ten years previous to this time?

A. I think so, I am not sure. I did not know him intimately. I simply met him now and then and had business relations with him. We were tenants in common in some mineral lands.

Q. Didn't he have charge of platting and selling some additions to Butte?

A. We were interested in platting what I think they called Valley addition.

Q. Had you been associated with Cobban enough to form an idea of him as to his judgment in buying timber?

A. My impression is that he was a very clever man.

Q. Well, as a matter of fact, to judge from this letter of May 29th, that the subject matter of purchasing the timber had been talked over by you and Mr. Wethey for quite a long time before that?

A. I am not sure just what passed between us.

Q. Before you left Montana?

A. I think so. Not the purchasing of timber from

(Testimony of William A. Clark.)

Mr. Cobban. We had purchased some scrip before I went away.

Q. Do you know who had charge of that?

A. I do not. I think we bought some scrip from some one in California, I think a Mr. Hyde.

Q. How long previous to your leaving Montana, after the close of the Legislative Session in March, 1899, was it that you saw Cobban in regard to this matter?

A. I think probably it was about—I could not state positively. I think probably in March before I went away.

Q. Whereabouts did you see him?

A. I do not recollect that circumstance at all. I suppose it happened probably in my office. I have no recollection of it.

Q. No recollection of what took place between you?

A. Only the conversation about the purchase of the land.

Q. What was that?

A. That we wanted $1.50 per thousand feet for it. We had some other conversation about the location of the timber and the character of it. I cannot state it in detail but I have some general impression about it.

Q. What did he say about the location of it?

A. I cannot recall what he said after this lapse of time. I do not burden by mind with transactions of that kind. I act upon the moment generally.

Q. Do you know whether when he spoke to you in

(Testimony of William A. Clark.)

March, 1899, whether or not he had at that time bought any lands?

A. That was my understanding that he owned these lands.

A. Yes, sir; at the time we had the conversation that he owned the lands.

Q. Who was present at that time?

A. I do not recollect. It is probable that Mr. Wethey was, but I cannot state positively.

Q. As a matter of fact couldn't you in your dealings with Mr. Cobban, in matters which you were interested in as you have stated, have had independent conversations with Mr. Cobban without Mr. Wethey being present? A. I could not.

Q. You might have had? A. Possibly.

Q As a matter of fact, some of these conversations as to the general character of the land and where located might have been between just yourself and Mr. Cobban?

A. I do not think it probable. I think all these matters were discussed in the presence of Mr. Wethey.

Q. And you understood that the land was his at the time?

A. It was my belief that he was selling me something that he possessed. I certainly should not have held any negotiations with him for something he did not own, if I knew it.

Q. You might have had in mind that he was securing them?

(Testimony of William A. Clark.)

A. I did not have in mind that he was securing these lands, but that he owned them.

Q. Did you never learn, in any way, as to how he was acquiring title to the lands?

A. I do not recollect having any information as to how he was procuring title to them. My impression was that he had already procured them.

Q. How and in what manner, you had no knowledge?

A. No knowledge whatever. That matter was never discussed as to how he procured title I was satisfied with the title as passed upon by my attorneys and that was all that concerned me.

Q. You were anxious to find out in regard to the quality of the timber, of course?

A. Certainly. It was very important that I should know about what I was buying.

Q. And generally all the facts and data that would bear upon the question of what you were buying?

A. Well, the principal things that concerned me were whether he had the property to sell and the character of it and the price and if he was willing to sell.

Q. Whom did you trust with the details of the matter as to the quality and character of the timber?

A. Mr. Wethey had the general management and care of it and Mr. McLaughlin was either to examine the land with regard to the character and amount of the timber or procure some one who was competent to do it.

Q. That is to make estimates?

A. To make estimates.

(Testimony of William A. Clark.)

Q. Do you know who that was?

A. I think he did it himself or a part of it at least. It was done to the satisfaction of Mr. Wethey.

Q. You didn't go down at any time yourself into this country?

A. Not during this time. I was not in that country at all while any of these transactions were made or entered into.

Q. When did you go there?

A. I have never seen any of the timber except a little of Nine Mile. I have seen Big Blackfoot, but I have never seen any of that timber.

Q. When did you first learn as to how and in what manner Mr. Cobban had acquired these lands?

A. Well, I cannot say that I ever learned how he acquired them. The newspapers spoke about the manner in which he acquired them from time to time. That was after everything had been closed up.

Q. Didn't you ever examine personally any of these abstracts; did you ever see any of them?

A. I do not recollect of having seen any of them. I may have, but I do not recollect it.

Q. You have no recollection of being present when one of these abstracts was brought into the office?

A. I do not think I ever saw any of the abstracts. I left the matter entirely with Mr. Wethey. The question of the abstract was to be submitted to my attorneys to be passed up before money was paid over.

(Testimony of William A. Clark.)

Q. As I understand it all there is about it so far as you are concerned, you wanted the timber and was willing to pay $1.25 per thousand feet. That is all you had to do with it. You left all the details to others?

A. Exactly so.

Q But with a general instruction from you that they should make a thorough examination into all the necessary facts and circumstances of the case?

A. Precisely so.

Q. I notice in your letter of October 16, 1899, to Mr. Wethey, you refer to his acquiring title to forty million feet of lumber on the Big Blackfoot? Do you recollect just exactly from what source you acquired this information that this land was paid for by Mr. Cobban and his relatives?

A. I would infer from the letter that it was referred to in his letter to me of the 14th, but it might have been suggested to me in conversation. I refer to his letter there of the 14th and note his statement that he had acquired title to forty million feet of lumber on the Big Blackfoot which he and his relatives have paid for, which he was desirous of deeding over to me.

Q. Wouldn't you judge from that that there had been some conversation more or less with regard to the matter as to how he had acquired title to this land?

A. It would not imply that at all. I would interpret that to mean that Mr. Cobban had made the statement that he had acquired title to forty million feet of lum-

(Testimony of William A. Clark.)

ber in the Big Blackfoot which he and his relatives had paid for.

Q. You notice that you were in Butte at the time yourself? A. Yes, sir; I was there.

Q. And simply because it was in writing was by reason of the rather ingenuous method you have adopted of carrying on your business dealings in writing even while in your own office? A. Yes, sir.

Q. You say it might have been in conversation?

A. It is possible; I have no recollection of it.

Q. With Mr. Cobban?

A. No, I do not imply that I had any conversation with Mr. Cobban at all. I am referring now to the letter of Mr. Wethey of the 14th of October, 1899.

Q. He was in an adjoining room?

A. Not in an adjoining room, but in the building.

Q. You frequently had, in addition to your correspondence, communication by word of mouth, did you not?

A. Yes, sir; sometimes, but as a rule by correspondence. I did not have much time to talk.

Q. Have you any knowledge or recollection of any kind as to how you happened to use the words other than what you have given?

A. None whatever. It relates simply to a letter which he wrote.

Q. You had a conversation with Mr. McLaughlin about the matter, did you not?

(Testimony of William A. Clark.)

A. I do not recollect a single conversation I had with him although it is probable that I did. He was in Butte once in a while. We were always pretty busy. He played a very minor part in it. I do not think I ever spoke to him about it, but it is probable that I may have.

Q. Have you no recollection of his coming to you in Butte and telling you that he knew of this lumber on the Blackfoot and of its general characteristics?

A. I have no recollection of having a word with him about it at all, but I may have.

Q. Do you think that if Mr. McLaughin told you about the arrangements he was going to make with Mr. Cobban you would remember it?

A. Mr. McLaughlin had nothing to do with making arrangements with Mr. Cobban so far as my interests were concerned. He had nothing whatever to do with it.

Q. He might have spoken with you in regard to the matter and you have forgotten it?

A. He might have referred to it but I have no recollection of it. He has no interest in it. I do not usually talk with people about my affairs who have no interest in them.

Q. Do you know how Mr. Cobban came to move back to Missoula? A. I do not.

Q. Have you had any conversation with him on the subject? A. None whatever.

(Testimony of William A. Clark.)

Q. In many matters of this general business of which Mr. Wethey had charge he frequently made the arrangements about the details of the contract without conferring with you, didn't he?

A. He did not make any contracts without submitting them to me unless it was some minor matter. Anything like purchasing timber he would not attempt to do without obtaining my consent. After the timber was purchased he attended to the details, the supplemental arrangements. Of course, I could not look after all these things myself.

Q. If Mr. Wethey did not have authority from you to make these contracts without your consent how is it in your letter of May 29, 1899, dated at New York, you use these words, "New York, May 29, 1899. Mr. A. H. Wethey, Secretary, Butte, Mont. Dear Sir: I have your three favors of the 24th and note contents. There is too much liberty taken in making contracts without my consent"?

A. That evidently related to the purchase of Forest Reserve Scrip. Of course, I have not the details of that transaction nor do I recollect it. He probably may have purchased some Forest Reserve Scrip that had not been submitted to me with the impression that I desired to get more. It had nothing to do with this transaction with Cobban. It seems that I had offered scrip at a lower price than they had been paying for it. Besides, at that time, I had negotiations with the N. P.

(Testimony of William A. Clark.)

Railroad Company to buy a lot of their timber lands at a low price, but it was never carried out. They had given an option on it to someone else. It was only a matter of $350. I would infer from this that it was not Mr. Wethey I was complaining of but someone else, possibly Mr. McLaughlin. He was not making contracts without my consent. He had no right to do it. I never knew Mr. Wethey to exceed his authority in anything.

Q. Did Cobban ever say anything to you about advancing him money to buy these lands?

A. To buy which lands?

Q. These lands which you afterwards bought?

A. There was never a word spoken between Cobban and myself about advancing him money to secure any lands. There was never a word spoken about it. He never asked for money to buy lands with.

Q. You never authorized any money to be advanced for that purpose?

A. I never did. I do not do business in that way.

Q. Don't you know the fact that $10,000 was borrowed by Cobban on his own additional note from the banking-house of W. A. Clark and Brother without any security?

A. I do not know that he ever did borrow any money from them. It is barely possible. That is what they were in business for. I have nothing to do with the details of the banking business.

(Testimony of William A. Clark.)

Q. If this money was loaned Mr. Cobban by the bank upon the personal assurance of Mr. Wethey who went with Cobban to the bank to see that it was all right, you had no knowledge of it?

A. I did not.

Q. That money was used for the express purpose of buying this timber and secured afterwards by a mortgage on the land?

Mr. BICKFORD.—I object to the question as not being proper cross-examination. The question is based upon something that has not heretofore been brought out in the evidence and is in no sense proper cross-examination.

Q. If what I have stated to you is true you have no knowledge of it?

A. No, sir; I have no knowledge of it.

Q. Don't you know that the loan was afterwards paid by a larger amount of money than was advanced?

A. I do not know anything about his relations with the bank.

Q. If it was done for him it was done by Mr. Wethey?

A. Anything in the way of loans from the bank does not come within the province of Mr. Wethey. The bank is operated by my brother, the cashier, Mr. Johnson and the Assistant Cashier, Mr. Heslett. Mr. Wethey has nothing to do with the banking business and has no knowledge of it unless someone should tell him. He

(Testimony of William A. Clark.)

knows nothing whatever about it. If they loaned him that money they no doubt had good security for it. I do not inquire into people's business as long as they attend to their business properly.

Q. I understand you had no knowledge and have no knowledge now of Cobban borrowing any money from the bank?

A. None whatever. I had nothing to do with the details of the banking business. Sometimes some large transactions are called to my attention as to the general financial policy of the bank I have something to do with it, but the question of a loan of $10,000 would never be submitted to me, at all.

Q. When you paid your money for these lands do I understand that you had no knowledge whatever as to the state of the title? A. I did.

Q. What was that?

A. That the title had been passed upon by my attorneys and that it was satisfactory. That was all I cared to know.

Q. How, from whom, and by what means, Cobban obtained such title as he had at the time he deed to you you had no knowledge whatever?

A. None whatever.

Q. Do you know anything about the Stone and Timber Act?

A. I know that there is such an act and that entries are made under it by properly qualified people I never had any experience in making entries under it

(Testimony of William A. Clark.)

Q. When did you first find out that this land that you bought was entered under the Stone and Timber Act?

A. I do not recollect now. I don't suppose I ever gave it a thought. It made no difference to me how it was entered so I got a good title to it.

Redirect Examination.

(By Mr. BICKFORD.)

Q. Calling your attention to the date of the deeds referred to, July 29, 1899, I will ask you to state whether or no it was on or about the date of these deeds that you first talked with Mr. Cobban concerning the purchase of the land from him located in Blackfoot river?

Mr. MAYNARD.—I object as it is not proper redirect examination.

A. I do not recall the time as relating to the deed.

Q. For the purpose of refreshing your recollection state if as a matter of fact you left for New York or for the east in March, 1899, shortly after the adjournment of the legislative assembly?

A. I left before the adjournment.

Q. The adjournment was in March?

A. Yes, sir.

Q. Is it not a fact that you remainded in the east a considerable length of time after that?

Mr. MAYNARD.—Objected to as not proper redirect examination and as leading.

(Testimony of William A. Clark.)

Mr. BICKFORD.—He did testify in his cross-examination that he had a talk with Mr. Cobban in March. I want to bring to the attention of the witness the fact that he had departed for New York prior to the time he purchased the lands upon the Blackfoot river. What have you to say with reference to any conversation you had with Mr. Cobban prior to your departure for New York in the month of February or March, 1899?

A. My memorandum-book tells exactly when I left Montana and went to Arizona, New Mexico and then I went to New York.

Q. Do you remember of having any conversation with Mr. Cobban before your departure for New York?

A. I testified I think that it was in March.

Q. Did you return to Montana from the time of your leaving in March, 1899, to the month of May?

A. July 4th is the first letter shown here. It was about that time that I got back.

Q. What have you to say as to any conversation you had with Mr. Cobban prior to your leaving for New York?

A. I think I never had any conversation with him prior to that. I think it was in February that I left. I left a long time before the legislature adjourned.

Q. Then, as I understand the matter, you had a talk about this land before you left for the east?

Mr. MAYNARD.—I object to the question as being leading and on the ground that it has been thoroughly gone over in the direct and cross-examination.

(Testimony of William A. Clark.)

A. I will state that in my opinion that I was incorrect in stating that I had a talk with Mr. Cobban in March.

Q. Then, what have you to say as to your best recollection when you did first talk with him in reference to this matter?

A. I have no impression about that at all. I do not remember.

Q. What have you to say with reference to Mr. McLaughlin being employed by you to make any option or agreement for you with reference to the purchase of timber lands?

A. None whatever. He was never so employed.

WILLIAM A. CLARK.

Subscribed and sworn to before me this 20th day of May, 1902.

[Notarial Seal] SAML. C. MILLS.

Notary Public in and for the District of Columbia.

I hereby certify that the foregoing deposition (comprising thirty-one typewritten pages) was taken down by me in shorthand from the statements when and as uttered by the deponent thereof; that the same were thereafter transcribed and reduced to typewriting and thereupon read and subscribed by the deponent thereof in my presence.

I further certify that my fee of $33.60 for taking, certifying and returning said deposition has been paid to me by the complainant.

(Testimony of R. M. Cobban.)

And I further certify that I am not of counsel or in any way interested in the prosecution of this case.

[Notarial Seal] SAML. C. MILLS,

Notary Public in and for the District of Columbia.

R. M. COBBAN, a witness called in behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Cobban, where do you reside?

A. Missoula, Montana.

Q. How long have you lived there?

A. I have lived there for three years.

Q. Going there in what year?

A. I went there in the fall of 1898.

Q. What is your business, Mr. Cobban?

A. Real estate and loaning business.

Q. In connection with the real estate business, what particular lines do you engage in?

A. Well, I buy and sell all classes of real estate, city property and residence and business property, and farm property, and orchard tracts, and I have made a specialty of five and ten acre tracts. I handle timber land a great deal, and generally do a great deal in the way of loans.

Q. Has your business in that line been confined to Missoula, Mr. Cobban, or do you prosecute it elsewhere?

(Testimony of R. M. Cobban.)

And did you prosecute that business elsewhere before going to Missoula?

A. I have been engaged in the business for—started in the business in the city of Butte in the fall of 1883, and I have been engaged in that business ever since, largely in Silver Bow County, Montana. Have also handled a good deal of property in Missoula County. Have handled a good deal of property in the State of Idaho, and also in the city of Bozeman—have handled some property there, although my office for a good many years was in Butte.

Q. And what was your business in the city of Butte, what has it been since 1883, down to the time you moved to Missoula?

A. The real estate business, nearly exclusively, buying and selling and loaning.

Q. Now, you testified that part of your business was buying and selling timber lands. I wish you would state, Mr. Cobban, whether in the conduct of that business you bought and sold any lands during the year 1899? A. I did.

Q. Where were those lands situated?

A. I think that all of the timber lands that I sold in 1899, were situated in the Blackfoot—on the Blackfoot river.

Q. And as to where any lands were situated—the timber lands were situated that you acquired in 1899?

A. I purchased timber lands on the Blackfoot, and

(Testimony of R. M. Cobban.)

in the Bitterroot valley, and some few pieces on the Missoula river—down on the lower Missoula river. I also acquired some in the State of Oregon.

Q. I wish you would state in what respect, if at all, you acted as the agent of the defendant, W. A. Clark, during the year 1899?

A. I did not act as the agent of W. A. Clark at all.

Q. And what have you to say as to acting as agent of W. A. Clark in the acquisition of titles to timber lands at any time?

A. I never have acted as the agent, either—of W. A. Clark, in procuring the entry or buying of timber lands.

Q. What have you to say as to having so claimed to act?

A. I never claimed to have acted as his agent.

Q. It is averred in the bill of complaint herein, Mr. Cobban, that sometime after the first of January, 1898, claiming to act for the use and benefit of the defendant herein, W. A. Clark, in so doing, that you set about the business of procuring the title to and possession of lands described in the bill of complaint. What have you to say as to your having so set about?

A. I never set about as the agent of W. A. Clark in any way.

Q. It is further averred that in pursuance of that object, that is, with a view to acquiring the title to lands for W. A. Clark, you entered into a contract with one

(Testimony of R. M. Cobban.)

C. E. Griswold—meaning Chauncey L. Griswold. What have you to say as to that?

A. I never entered into any contract as the agent of W. A. Clark.

Q. Or for the purpose of acquiring lands for him?

A. No, sir.

Q. It is further averred in the bill of complaint, that in the conduct of such business you associated yourself with John B. Catlin, and Griswold, referred to, with a view to acquiring title to these lands for the defendant, W. A. Clark. What have you to say as to that?

A. It is false.

Q. And it is further averred that the three parties, Cobban, Griswold and Catlin, by and through themselves and others, examined the lands, and procured various persons of both sexes, for hire, to enter land under said act, meaning the act for the entry of timber and stone lands. What have you to say as to your having procured persons for hire to enter such lands?

A. I never did.

Q. Now, it is averred in the same connection that you paid their expenses and those of their witnesses, and paid the price of acquiring it at the proper land office of the United States, for the purpose of acquiring such titles—within the jurisdiction of which said parcels of land were respectively situated. What have you to say as to that, Mr. Cobban?

A. I never did, as the agent of W. A. Clark, or with

(Testimony of R. M. Cobban.)

any agreement that they were acting—that they were to transfer the lands to me.

Q. Well, did you, as a matter of fact, furnish to a number of persons during that year the money with which to pay their expenses to purchase tracts of land?

A. I did, as a loan; I loaned them money for that purpose.

Q. Now, what is the fact, Mr. Cobban, about your having at any time hired any person to take up a claim under the Stone and Timber Act?

A. I never hired anyone to take up a claim under the Stone and Timber Act.

Q. Who, if at all, did you authorize to act on your behalf in taking up land under the Timber and Stone Act?

A. I never authorized anyone to hire anyone to take up a timber and stone claim.

Q. Or under any other act? A. No, sir.

Q. It is further averred in the bill of complaint that you procured certain parties in making entries under the Stone and Timber Act, to make false and fraudulent proofs, and to make certain sworn statements at the time of filing, in which sworn statements and proofs it was falsely averred in substance that these parties were making entries in their own interest, and without any agreement to convey to any person, either express or implied. What have you to say as to your having procured such parties to make such affidavit?

(Testimony of R. M. Cobban.)

A. I never procured anyone, or made any arrangements with them to do so. The allegation is false.

Q. You heard the testimony given by the witness, Chauncey L. Griswold in this case, didn't you, Mr. Cobban? A. I heard a great deal of it.

Q. What have you to say as to your ever having authorized him to enter into any agreement with anybody on your behalf, to the effect that you would furnish the money necessary to pay the expenses incurred by persons in taking up lands under the Stone and Timber Act, and the purchase price, and to pay them a hundred dollars for the land?

A. I never gave any such instructions in the world, either to Mr. Griswold or to any other person.

Q. Now, what instructions did you give Mr. Griswold, Mr. Cobban, with reference to the matter of furnishing money to any persons who desired to take up lands under the Stone and Timber Act?

A. I gave Mr. Griswold instructions that I would loan to responsible parties, wherever the timber would justify, the amount of money necessary to pay their expenses, where they needed it, or where they wanted enough to pay for their lands, I would furnish that amount of money as a loan to these people, to be secured by a mortgage, after they had proven up on the claim.

Q. Now, what did you say to Mr. Griswold with reference to the matter of making agreements with these parties to whom the money was to be furnished, or to

(Testimony of R. M. Cobban.)

any parties, to the effect that you would purchase their lands after they had made final proof?

A. I told Mr. Griswold numerous times, and talked with him and consulted him about that, that he must be very careful and not say anything that would indicate to any person that we would purchase the land; that there must be no agreement that we would purchase the land, or that I would purchase the land.

Q. And when did you first say so to him, with reference to the time that he first went to work with you?

A. Well, sir; he first went to work for me—when he first went to work for us, and at numerous times thereafter. It was well understood and there was no doubt on that score that he knew thoroughly that it was my instructions at all times.

Q. Mr. Cobban, I wish you would state whether at the time you had been acquiring these lands, what information you had at the time you acquired these lands on the Blackfoot, or had been acquiring these lands on the Blackfoot, as to the criminal character of an entry made by one person under an agreement to transfer or convey it to another before entry made, by any other person?

A. I knew absolutely that it was contrary to law, and I did not go into the business with any intention of violating the law or breaking it.

Q. What have you to say, Mr. Cobban, as to the testimony of Mr. Griswold, to the effect that you didn't

(Testimony of R. M. Cobban.)

so say to him at any time prior to or on the first day of September, 1896?

A. I say that it is absolutely false, and he himself has so acknowledged.

Q. Now in the effort to obtain timber lands on the Blackfoot, Mr. Cobban, I wish you would state what class of lands you bought or sought to buy?

A. I sought only to buy lands that had been taken up under the Scrip Act, and lands that had been proved up on and after final proof, and that were held by a receiver's receipt or a United States patent.

Q. Now, what do you mean by the Scrip Act?

A. The so-called Scrip Act was an act of Congress, creating forest reserves in different parts of the United States, and the Act of Congress was to the effect that any person owning titled lands within a forest reserve, might reconvey the same to the Government, and as soon as they had so conveyed to the Government, they might select an equal amount of unappropriated land in any part of the United States, not mineral in character.

Q. And these rights were by the parties assigned, were they?

A. Yes, sir; in procuring the scrip lands I often bought land outright and conveyed it myself to the Government. Oftentimes purchased—the parties from whom I purchased conveyed to the Government of the United States, and gave me a power of attorney to select elsewhere.

(Testimony of R. M. Cobban.)

Q. Now, how did you actually acquire title, Mr. Cobban, and what character of lands did you actually buy?

A. I bought the three characters of land that I spoke of, land that had been proven up on, and held by United States patent, and I bought large quantities of scrip land, so called scrip land, and I bought a great deal of land that was held by receiver's receipts.

Q. Now, speaking about the scrip lands, Mr. Cobban, I wish you would state whether you purchased the timber lands from parties who had located it under the Forest Reserve Act, or whether you yourself located land under the Forest Reserve Act?

A. Well, in nearly all cases; in fact, in all cases I had selected the land. In one or two instances the parties—the land was conveyed to a certain party, and then they conveyed it to me. They made the selection and then conveyed the lands to me; but I searched out the lands that were the basis of these transactions.

Q. Now, I refer to your having enlisted the services of Messrs. Jakways & Faust in the efforts to acquire lands. I wish you to state what directions, if any, you ever gave to Jakways & Faust, to the effect that you would like to have them procure parties to take up lands under the Stone and Timber Act, and that you would furnish them money with which to pay the expenses necessary, and to pay them one hundred dollars for their claims, if they would convey to you?

A. I never made any such arrangement in the world with Jakways & Faust.

(Testimony of R. M. Cobban.)

Q. What have you to say as to your leaving money with Jakways & Faust for the purpose of securing claims, with the further instructions that if they needed any more money to carry out such deal, than you gave to them, that they should advance it, and then you would furnish them further money with which to reimburse them?

A. I never furnished them with any money or gave any such instructions.

Q. Do you know L. A. Wells? A. I do.

Q. Where did you first make his acquaintance?

A. Well, I cannot say, but I think in the spring of 1899.

Q. Do you remember where it was that you met him?

A. Not for certain; I cannot call to mind the first time.

Q. Do you now recall any occasion when you met him at what has been spoken of as Mr. Griswold's place, at the Clearwater river?

A. I did; I met him there.

Q. Can you tell us, Mr. Cobban, about when that was?

A. Well, I should say—I should say probably in the month of May or June, 1899.

Q. I wish you would state whether at that time or at any time you had any conversation with him in regard to persons taking up claims under the Timber and Stone Act?

(Testimony of R. M. Cobban.)

A. Well, I don't think that the subject was ever mentioned at all, but if it was, it was certainly not in accordance with the testimony which he gave on that subject.

Q. Did you hear Mr. Wells' testimony?

A. I did.

Q. It appears from the record, Mr. Cobban, that Mr. Wells testified concerning a conversation which he had with you, as follows, at page 978.

"Q. You state that you did have a conversation with Mr. Cobban. Please state fully and exactly as you can just what the subject matter of that conversation was, and what you said to him and what he said to you.

"A. The conversation related to timber claims, and was to this effect, that I didn't favor taking timber lands under this Stone and Timber Act, because of the crookedness it required to acquire a title to the land; that I was in favor of taking this land as scrip land, to use Forest Reserve or Lieu Land scrip on it. I talked the matter over with Mr. Griswold and I told Mr. Griswold that the character—

"Q. I asked you what you said to Mr. Cobban?

"A. I told him that it would require a man to commit perjury to acquire title to that land, taking it under the Stone and Timber Act. Mr. Cobban said that if those people there could not be depended on, that he had over two hundred applicants to take the land under the Stone and Timber Act, and the people were stopping him on the corners of the streets of Missoula, making

(Testimony of R. M. Cobban.)

application, or filing their applications for stone and timber claims with him; that he could get all the people that he wanted to take those claims for one hundred dollars, and some of them offered to take it for less, even fifty dollars per claim."

Q. What have you to say as to such a conversation having taken place with Mr. Wells?

A. That it is wholly and absolutely false.

Q. What portion of this conversation which I have just read to you, Mr. Cobban, did actually take place, if any portion of it?

A. There was no portion of that conversation. There was a conversation with Mr. Wells for a few moments. I am under the impression that at that time I was introduced to Mr. Wells. I think it was the first time I had ever met Mr. Wells, and there were simply a few remarks passed, something about the weather or his business. He was butchering at that time, and he brought in a load of meat, and I was waiting for dinner at the—at Mr. Griswold's place, when I met him, and I think we had dinner together. We sat at the same table. There was no part of the conversation there related that was carried on between us.

Q. The witness further testified as follows, Mr. Cobban, I read from page 979 of the record:

"Q. Did you afterwards meet Mr. Cobban at Ovando?

"A. I did.

"Q. When was that?

"A. Well, I couldn't state the exact time nor the

(Testimony of R. M. Cobban.)

time of Mr. Cobban's visit there, but Mr. Griswold was also there.

"Q. You may state as to whether or not at that time and place you had any conversation with him?

"A. I did.

"Q. Give us the substance of that conversation?

"Q. I don't care to go into the details; I just simply call for the substance of that conversation.

"A. Mr. Cobban wanted to know if I was able to prove up on the claim that I had filed on. I told him I didn't know. He said he would like to get that claim—it was a very valuable claim—and he would like to be sure that he could have the claim, and if I hadn't the funds to prove up on with, he would advance them, only he wanted a guarantee or assurance that I would transfer the claim to him when I proved up. I told Mr. Cobban that I wasn't selling horses until I had a title to them; in other words, that I would not sell anything that I did not own."

What have you to say as to that conversation having taken place? A. It is absolutely false.

Q. What portion of it ever took place?

A. There was no portion of it; no conversation of that kind; I don't remember of having met Mr. Wells at Ovando; I did meet him in the woods near Ovando, and it was on or near a claim that he had taken up. I was going over the country looking at the timber generally, and I met Mr. Wells, and something was said by him as to whether or not if he needed it, I would

(Testimony of R. M. Cobban.)

loan him money on the claim. I had heard considerable of Mr. Wells at that time, and about his reputation, and I gave him no direct answer, whether I would or would not make him a loan.

Q. In the same connection, the witness testified as follows: I read from page 980 of the record.

"Q. As to whether or not at that time and place you again spoke to him about the nature of the crime that he was committing?

"A. I told Mr. Cobban that to accept of his money to make that proof, or anybody else's money, to give them a lien on that land, would require me or anybody else that took up land in that manner to commit perjury, and would make him out a liar.

"Q. What did he say?

"A. He said that was right."

Q. What have you to say as to that conversation having taken place, Mr. Cobban?

A. It is false in every way.

Q. What portion of that conversation took place?

A. There was no portion of that conversation took place.

Q. Now, Mrs. Wells testified here, Mr. Cobban, to the effect that when she was returning from Helena with Mr. Griswold, after she had made her final proof upon her land, that a telegram was received by Mr. Griswold, while they were sitting at the table in the dining-car on the train leaving Helena, to this effect:

(Testimony of R. M. Cobban.)

That you directed Mr. Griswold not to advance any money on the Wells' claims until you were sure that he could get the claims. What have you to say as to having sent any such telegram?

A. I never did; I never sent any telegram of that nature.

Q. Or in substance to that effect, Mr. Cobban?

A. No, sir.

Q. Now, it appears, Mr. Cobban, that you did as a matter of fact, sell some of these lands acquired by you during the year 1899, to the defendant, W. A. Clark?

A. Yes, sir.

Q. What arrangements, if any, did you have with the defendant, W. A. Clark, prior to the time that you set about to acquire title to timber lands in the Blackfoot, that you would convey to him, when you had acquired title?

A. I had never spoken to Mr. Clark or any of his agents in regard to the timber until I had acquired considerable timber on the Blackfoot river.

Q. Then with whom did you confer about the matter, and whom did you open up negotiations with?

A. I think I spoke to Mr. McLaughlin first in regard to it.

Q. Now, do you remember whether the negotiations were opened up by Mr. McLaughlin coming to you, or by your going to Mr. McLaughlin?

A. I went to Mr. McLaughlin.

(Testimony of R. M. Cobban.)

Q. Did you hear Mr. McLaughlin's testimony about that matter, Mr. Cobban?

A. I did, yes, sir.

Q. Did you hear what he said? A. Yes, sir.

Q. Well, what did he say; what occurred, Mr. Cobban?

A. He came to me—but in fact I went to Mr. McLaughlin, and spoke to him first about the timber.

Q. That, as I understood you to say, was after you had acquired title to certain lands?

A. Yes, sir.

Q. And what lands did you offer to sell to him with reference to the question as to whether you had then or had not then acquired title to it?

A. I never offered him any land that I did not have title to—except those scrip lands.

Q. Now, what was the difference in the case of the scrip lands and the other land?

A. In the case of the scrip lands I had nothing whatever to show from the land office, not even the receiver's receipt. After the filing is made you have to wait anywhere from a year to three years to know whether or not your title will be approved.

Q. But had you actually filed your applications and surrendered your title to the lieu lands—to the lands surrendered to the Government of the United States, at the time that you offered them for sale?

A. I had, yes, sir; I had gone as far as I possibly could.

(Testimony of R. M. Cobban.)

By Mr. WALSH.—I might say in this connection that the United States Circuit Court of Appeals has held that when you got title after final receipt in these cases, that your title is good. So that you, when you refer to the title to these lands, you can refer to it as having the title to them. I state this so that you will understand.

Q. Now, did you, as a matter of fact, sell certain of the lands to Mr. Clark?

A. I did, yes, sir.

Q. And when, if at all, did you make the first sale, Mr. Cobban?

A. Well, I have forgotten just when the sale was completed.

Q. Have you now in your possession any memoranda which will suggest to you the time when the sale was made? A. Yes, sir.

Q. I wish you would refer to it. I show you Defendant's Exhibit No. 293, and Defendant's Exhibit No. 276, and Defendant's Exhibit No. 277, and referring to the dates of these instruments, Mr. Cobban, I wish you would then answer the question, if they will enable you to do so.

A. Those were the first sales.

Q. Now, as to the date when you made the first sale?

A. It was on the 29th day of July, 1899.

Q. Now, Mr. Cobban, I wish you would state whether prior to that time you had not met and conversed with

(Testimony of R. M. Cobban.)

the defendant, W. A. Clark, for the sale and transfer to him of the lands embraced in the conveyances before you?

A. Yes, sir, for a portion of them.

Q. State when and where it was that you met him?

A. Well, I couldn't say just the time, but I—some few days before, I think—it was during the month of July.

Q. What, if anything, did you say to him, and what did he say to you?

A. I met Mr. Clark in his office and told him that I had some timber lands for sale on the Blackfoot river, and I told him what—about how much I had, what I had, and I told him what I would ask him for it. I offered to sell it for a dollar and a quarter a thousand, and he took the matter under advisement. The conference only extended over about five minutes with Mr. Clark. Later on it was taken up with Mr. McLaughlin, and my business was done entirely with Mr. Wethey, Mr. Bickford or Mr. McLaughlin, and that that time Mr. Clark did not give me an answer definitely, at the time that I first presented the matter to him.

Q. How did the negotiations finally result, Mr. Cobban?

A. In his saying that Mr. Bickford might look over the titles to the land that I had to offer, and that he would purchase if the titles were satisfactory.

Q. Now, what, if anything, was said in the course of the conversation had with the defendant, W. A.

(Testimony of R. M. Cobban.)

Clark, in reference to the source from which you had derived title?

A. I don't think he asked a word about that, and the only thing was that I was to give him a good title, and Mr. Bickford was to examine—or his attorneys were to examine the abstracts of title, and, if found satisfactory, he would make the purchase of the amount that I had.

Q. Now, do you remember, Mr. Cobban, any conversation taking place at that time with the defendant, concerning the scrip lands as distinct from the deeded lands?

A. I had no scrip lands to offer him at the first—the first time I met him and talked with him about it, and the only conversation—and the only lands offered to him were the lands that I actually owned at that time, or had options on, or deeds to which were in nearly all instances in the bank, or I had options for the purchase, of deeded lands.

Q. Now, what, if anything, did Mr. Clark or Mr. Wethey or Mr. Bickford know about the facts attendant upon the acquisition of title by you from the entrymen, or the facts attendant upon the acquisition of the title by the entrymen in the cases of the timber and stone land, other than what was disclosed by the abstracts, so far as you know?

A. They had no knowledge other than what was given them by the abstracts, to my knowledge. I don't think they knew anything of it.

(Testimony of R. M. Cobban.)

Q. What have you to say as to knowing anything about your having been hired by Mr. Clark to hire these entrymen to take up these lands?

A. Well, they certainly could not have known anything of the kind.

Q. Why?

A. Because there was no such thing existed.

Q. Now, what was paid you, if anything, by the defendant, Mr. Clark, for the lands mentioned in the deeds, before you, of date July 29th, 1899, Mr. Cobban?

A. Just the amount that is stated in the deeds; the actual—it is the amount that was stated in all the deeds, and I think in these deeds of conveyance, the actual amount paid by Mr. Clark is the actual consideration named in the deed—the amounts, in other words, named in the deeds was the actual consideration that he paid me.

Q. And as to how it was paid, Mr. Cobban?

A. It was generally, I think, on the first transaction that Mr. McLaughlin may have paid the money to me. I am not certain about that, whether Mr. McLaughlin paid me or whether Mr. Wethey paid me, but it was sometimes in checks and sometimes in drafts.

Q. But either checks or drafts or the cash?

A. Yes, sir.

Q. Do you remember at any time of being paid in cash or were you always paid by check or draft?

A. I don't recollect of having been paid in cash.

(Testimony of R. M. Cobban.)

Q. And what have you to say as to your having realized upon the checks and drafts?

A. I realized the full face of them.

Q. And when was the next sale made to Mr. Clark, Mr. Cobban, and I hand you Defendant's Exhibit No. 277, and Defendant's Exhibit No. 278, to aid you in answering the question.

A. The 16th day of September, 1899.

Q. And do you now recall how you came to sell this land to Mr. Clark? A. Yes, sir.

Q. State how it was?

A. I stated to Mr. McLaughlin, and I think to Mr. Wethey, that I had so much land; that I was the owner of a certain amount of land, and asked them whether Mr. Clark would purchase it, and after a little negotiations, they agreed to do so if the titles were satisfactory to Mr. Bickford or their attorney. The abstracts of title were furnished them, as also the deeds. We furnished them with the abstracts of title; they were examined and passed upon by Mr. Bickford.

Q. And the negotiations resulted how?

A. In a sale.

Q. As evidenced by those deeds? A. Yes, sir.

Q. And what have you to say as to whether you did or did not have the title to those lands included in the deeds, at the time they were sold?

A. I had the title to them all.

Q. When did you next make any sale to Mr. Clark,

(Testimony of R. M. Cobban.)

and I hand you Exhibits No. 283 and No. 284, to aid you in answering the question?

A. On the 13th day of November, 1899.

Q. Now, Mr. Cobban, I wish you would state what the facts were in connection with that.

A. I would say that one of these deeds was dated the 11th day of November, 1899, and I am not certain whether—I think it was all closed on the same day, but one of them is dated on the 13th day of November, 1899.

Q. And which date would you say the deal was closed on?

A. I would say that the deal was closed on the 13th, and possibly a day or two later than that.

Q. Now, state what the facts are in reference to that transaction.

A. Each of the transactions—this was a loan; this wasn't an out and out sale. This transaction—I offered to sell the lands to Senator Clark, and while he didn't wish to purchase at that time—to increase his purchases—I then submitted a proposition that I would like to make a loan and get seventy-five cents a thousand on the—as a loan on the timber lands, and giving him an option of four months for the purchase of the same at a dollar and twenty-five cents a thousand, and the proposition was later on accepted. There had been some negotiations a little before, and the deeds were made out.

(Testimony of R. M. Cobban.)

Q. And at that time what amount of money did you get?

A. I cannot tell without—it is the amount that was stated by Mr. Wethey, because I looked it up at that time; it was seventy-five cents a thousand on the amount.

Q. On the timber included? A. Yes, sir.

Q. And when you eventually sold to him, Mr. Cobban, what additional sum, if any, did you get?

A. I got the fifty cents a thousand, I think, in that case, less five per cent.

Q. How did that come about?

A. Because I wanted to use the money before the four months' option was up, and made them an inducement to close it up as a sale, and offered the discount of five per cent.

Q. Now, I wish you would state when you next made a sale of any other land to Senator Clark, and I had you Exhibits Nos. 280, 281 and 282, and for the purpose of aiding you in your answer?

A. There were deeds executed on the 9th day of January, 1900. I think that that was in the nature of a loan also.

Q. Did it ripen subsequently into a sale in the same manner as the other?

A. Yes, sir, and if I am not mistaken, I don't think I discounted it.

Q. And when did you next sell to Senator Clark. I hand you Exhibit No. 297, to aid you in your answer?

(Testimony of R. M. Cobban.)

A. There is one dated the 26th day of January, 1900.

Q. What are the facts connected with that transfer?

By Mr. MAYNARD.—What exhibit is that, dated the 26th of January?

By Mr. WALSH.—Exhibit No. 282.

A. I cannot now recall just what the conditions were.

Q. What is that?

A. I cannot recall what the conditions were. I know I followed Mr. Wethey's testimony in regard to this very closely, and took it up with him as to the vouchers that were shown here, and they corresponded with the vouchers that I had.

Q. By your information, Mr. Cobban, I inform you that the lands mentioned in that deed are not mentioned in the bill of complaint. Now, I refer you to Exhibit No. 297, and ask you when, if at all, you again sold any land to Senator Clark?

A. The 15th of June, 1900.

By Mr. MAYNARD.—What exhibit is that?

By the EXAMINER.—Exhibit No. 297.

Q. Now, Mr. Cobban, where did you get the money with which you obtained the title to these timber lands?

A. The greater part of the money that I used in the transactions I borrowed from the First National Bank of Butte. I also borrowed considerable sums of money from the First National Bank of Missoula, and from the Silver Bow National Bank of Butte, and from the

(Testimony of R. M. Cobban.)

State Savings Bank of Butte. I also borrowed some money of S. V. Kemper—or rather from the State Savings Bank, on which he was an indorser. I borrowed some money also of James McKinnon of Chippewa Falls, Wisconsin, and I also borrowed considerable money from S. C. F. Cobban, and at one time I borrowed from W. A. Clark & Bro. ten thousand dollars.

Q. What, if any, amounts of your own did you put into the business?

A. I had some few thousand dollars of my own, myself, and I had a good name and a credit.

Q. And what line of business were you carrying on at the same time?

A. I was carrying on a general real estate and loaning business.

Q. Had you any money from that source?

A. Yes, sir.

Q. Now, Mr. Cobban, you spoke about having borrowed some money from the First National Bank of Butte? A. Yes, sir.

Q. Have you any memorandum of the money which you borrowed from them?

A. I have here the canceled notes; I have here quite a number of canceled notes from the First National Bank of Butte.

Q. I wish you would let me have them, if you please.

A. Here they are.

Q. These are the notes of the First National Bank of Butte, are they?

(Testimony of R. M. Cobban.)

A. They are all notes of the First National Bank of Butte, I believe.

By Mr. WALSH.—I overlooked, if your Honor please, offering in evidence the two mortgages mentioned, and I therefore desire to put them in now.

By the EXAMINER.—Very well.

By Mr. MAYNARD.—We object to them and to their introduction in evidence, upon the ground that they are irrelevant and immaterial, and in no way sustain the allegations of the answer of the defendant, or tend to disprove the allegations in the bill of complaint of the complainant.

By Mr. WALSH.—We now offer in evidence exhibits No. 316 to 330, inclusive, being canceled notes given by Mr. Cobban to the First National Bank of Butte.

Q. Now, what, Mr. Cobban, do these notes evidence?

A. An indebtedness that I incurred at the First National Bank at Butte, and their payment.

Q. And for what purpose did you borrow the money evidenced by these notes, to the First National Bank of Butte?

A. Nearly all—all for the purposes of my business in Missoula, and nearly all of it in the purchase of timber lands.

Q. What was the occasion which compelled or required you to borrow money from the bank at these various times, evidenced by these notes?

(Testimony of R. M. Cobban.)

A. Well, I was buying large amounts of timber, and I thought it was a safe and a good business investment, and a good opportunity to make deals in timber lands.

Q. And for what purpose was the money evidenced by these notes that you gave to the First National Bank devoted?

A. Just for the purchase of timber lands and scrip.

Q. In addition to borrowing money from the First National Bank of Butte, from what other banks did you borrow money?

A. From the First National Bank of Missoula I borrowed considerable sums of money.

Q. I ask you if these notes or the money that you acquired on these notes, numbered exhibits 331 and 336, inclusive, evidenced the sums of money that you borrowed from the First National Bank of Missoula?

A. Yes, sir.

Q. And also the payment of the same?

A. Yes, sir.

Q. And for what purpose did you borrow these sums of money from the First National Bank of Butte?

A. Of Missoula, do you mean?

Q. Of Missoula, yes.

A. Nearly all for the purpose of buying timber lands.

Q. And for what purpose did you devote the money so realized?

A. To the purchase of timber lands.

Q. And from the State Savings Bank. I ask you

(Testimony of R. M. Cobban.)

what the notes which you executed to the State Savings Bank, marked exhibits 338 and 339, inclusive, evidenced, Mr. Cobban?

A. There are three notes to the State Savings Bank, of Butte, Montana.

Q. And what do they evidence?

A. They evidence an indebtedness incurred by me for money borrowed, and the payment of it.

Q. And for what purpose did you borrow this money from the State Savings Bank of Butte?

A. Mostly for the purchase of timber lands.

Q. And for what purpose was it used?

A. For the same purpose. One of the three notes I refer to was to the Silver Bow National Bank here in Butte, Montana.

Q. I ask you what the note reciting the terms, to the Silver Bow National Bank, and which the Examiner has marked exhibit No. 337, evidences, Mr. Cobban?

A. That was for money borrowed of the Silver Bow National Bank for the purpose of purchasing timber and timber lands.

Q. For what purpose was it devoted?

A. It was used for that purpose.

Q. I show you a note which is marked exhibit No. 340, evidencing a promise to pay money to James R. McKinnon, and ask you what it is?

A. It is money that I borrowed from Mr. McKinnon for the purpose of purchasing timber.

(Testimony of R. M. Cobban.)

Q. And to what purpose was the money devoted?

A. It was used for that purpose.

Q. I show you a note reciting a promise to pay certain money to S. C. F. Cobban, and ask you what it is, Mr. Cobban.

By the EXAMINER.—That note is marked exhibit No. 341.

A. Well, a portion of that money was used for the purchase of timber lands; a loan that I made from S. C. F. Cobban. I am not certain that it was all used in timber deals.

Q. And what relation, if any, does S. C. F. Cobban sustain to you?

A. He is an uncle. I borrowed considerable sums of money from S. C. F. Cobban that were not shown by notes here, also.

Q. And how was that transaction carried on, Mr. Cobban?

A. Well, that was simply money that was obtained under a contract. He advanced money under a contract to me, and I afterwards repaid it. It wasn't given in the shape of a note.

Q. Well, was it in the nature of a loan or in the nature of a joint venture?

A. It was a joint venture with me at first, and after I purchased his holding. I was to have a certain profit if anything was realized.

Q. Now, I show you two notes reciting a promise to

(Testimony of R. M. Cobban.)

pay to Joseph Boos, and ask you what they are, Mr. Cobban?

By the EXAMINER.—Those notes are marked exhibits No. 342 and 343.

A. It was money used in my business, there at Missoula, the real estate business there, or in the timber purchases.

Q. And from what other source, now, if any other, than the sources evidenced by these notes, and your uncle, S. C. F. Cobban, did you get the money with which to carry on this business?

A. Well, I think I have stated the various sources of revenue.

Q. And you said, among other things, that you got ten thousand dollars from the bank of W. A. Clark.

A. Yes, sir, that note is in evidence here now.

Q. Now, what have you to say, Mr. Cobban, as to your having been furnished by Mr. Clark at any time, that money with which you were to procure lands which were to be transferred to him?

A. I never received a dollar from W. A. Clark for that purpose.

By Mr. WALSH.—We now offer in evidence all of the notes referred to, the notes given to the First National Bank of Missoula, being exhibits No. 331 to 336, inclusive.

Q. What efforts, if any, Mr. Cobban, did you make

(Testimony of R. M. Cobban.)

after having acquired title to these timber lands to sell the same?

A. After the first sale in July, the lands that I had for sale after that time I offered to numerous parties, not only to W. A. Clark, but I offered them to the Blackfoot Milling Company, and I offered them at one time to William Kendall. I gave him an option for the purchase of all the lands that I had at that time. I also offered them to Mr. Heinze of the Montana Ore Purchasing Company, and I used every means to keep in touch with purchasers for that class of lands.

Q. Who was the second party that you said you had offered to sell them to. To the Blackfoot Milling Company?

A. To William Kendall. I also went East on two different occasions to see what the condition of the market was in the East and to see whether or not I could dispose of the land that I had at that time, in the East.

Q. What offers, if any, did you make of these lands to any parties in the east, Mr. Cobban?

A. I looked around and came in contact with quite a number of lumber men, to see whether or not I could make a sale to them, and it was somewhat for the purpos of finding out the condition of the lumber market, and of the timber market, and to see whether or not I could make a sale.

Q. And where in the east were the parties with whom you conferred about the matter of disposing of these lands?

(Testimony of R. M. Cobban.)

A. In Chippewa Falls, Wisconsin, and in Duluth. I was in Duluth and offered the timber lands there to Chester A. Congdon. In Chippewa Falls I saw a number of lumber men in regard to it, and in Chicago I got an introduction there to parties through parties in Duluth, and I went there to see if I could make a sale of the timber lands.

Q. And what lands were they that you were offering to these different parties for sale?

A. I think that at the time I was in Chippewa Falls, I think it was in September—September or October—it was all of the lands that I had at that time, and that was in 1899. The trip that I made to Chicago was in the summer of 1900.

Q. And what lands do you refer to?

A. I refer to the timber lands that I had on the Blackfoot river at that time, and the lands that were afterwards sold to W. A. Clark.

Q. Do you recall now, any effort that you made to sell those lands to the Largey estate?

A. Yes, sir, I offered to sell them to the Largey estate, through Mr. Noon, Mr. Bernard Noon.

Q. Did you, as a matter of fact, sell any lands to the Largey estate or the Largey Lumber Company, or to the Speculator mine?

A. I did, but not on the Blackfoot river.

Q. In these various offers that you made of lands, I wish you would state whether the lands mentioned in

(Testimony of R. M. Cobban.)

the bill of complaint—whether you first acquired title to them before you offered them for sale?

A. Yes, sir, whatever lands I owned at the time I offered them for sale, and some of them are in the bill of complaint; yes, sir.

Q. Now, what power, Mr. Cobban, did you ever vest in Chauncey L. Griswold to buy any claims for you?

A. I never authorized him to buy any claims; I simply authorized him to take options on titled lands for my consideration and examination.

Q. And in case all these parties who acquired lands under the Stone and Timber Act that you subsequently acquired, through Mr. Griswold, what power, if any, did you give to him with reference to the matter of acquiring the title?

A. I never gave him any directions to acquire title to these lands until after the people had proven up.

Q. Well, that is what I want to know. What instructions you did give him with reference to that matter?

A. Well, just the same as it was in the titled lands. He wasn't to buy any lands at all for me, but he could take and submit a proposition to me, except possibly in some particular instance where I would instruct him to go and make an offer of such an amount for a thing.

Q. And when, with reference to the time of making the final proof was the offer to purchase to be made under your instructions?

(Testimony of R. M. Cobban.)

A. Always after. I never authorized him or any other person. I never authorized him to make any offer for a claim prior to its approval, and prior to proof being made.

By Mr. WALSH.—That is all.

By Mr. MAYNARD.—In connection with all the other papers in the case, I demand the production by Mr. Cobban of all the original deeds that are named in the bill of complaint, that were made by these various entrymen and entrywomen and turned over to him.

(Recess taken until ten o'clock Wednesday, May 7th, 1902.)

HENRY N. BLAKE,
Master in Chancery.

Wednesday, May 7th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

R. M. COBBAN, a witness for defendant, recalled for cross-examination.

(By Mr. MAYNARD.)

Q. How a man are you, Mr. Cobban?

A. I am 43 years old.

Q. How long had you lived in Butte prior to moving to Missoula in 1898?

A. I came to Butte, Christmas Day, 1881, and lived here most of the time up to about 10 years ago, when I removed to Missoula and stayed there for about three years, returning again to Butte, remaining in Butte until the fall of 1898, when I again returned to Missoula.

(Testimony of R. M. Cobban.)

Q. How many years had you lived in Butte just prior to Missoula? A. The first time?

Q. No; this second time.

A. Well, I had lived here most of the time for 18 years, with the exception of the time that I was in Missoula, the prior time.

Q. You lived in Butte and then you went to Missoula, and then you returned to Butte, and then went back to Missoula?

A. Yes, sir; I lived in Butte about 15 years.

Q. You were interested in business with the defendant while you were living in Butte, and just before going to Missoula, were you not?

A. No, sir. I had some undivided mining and townsite interests, that is all.

Q. What were those interests?

A. Well, I think I was interested in the Valley Addition, some ground in the Valley Addition with him, and some in the Clark Addition and Carte Blanche and two or three unplatted mineral applications in the southern part of the city. I was associated with him the same as I was with quite a number of other individuals here.

Q. You had charge in the course of your business of handling the Clark Addition to the city of Butte, did you not?

A. I did for a short time; I don't remember that I ever handled any of W. A. Clark's property. I arranged for a division of the lots. E. H. Irvine had been the trustee of the various owners for a number of years, and

(Testimony of R. M. Cobban.)

the owners wished for a segregation, and I think that I arranged that segregation, and by that segregation the different interests were set apart. I may have paid some taxes for all of the owners jointly, but I did not handle Mr. Clark's property in that addition.

Q. How long had you been acquainted with the defendant?

A. Well, I don't remember when I first met him; I had known of him and known him by sight from shortly after I came to Butte and I knew him for over 20 years.

Q. How long previous to your coming to Missoula had you had business relations with the defendant?

A. I never had but very little business dealings with Senator Clark.

Q. Why did you move to Missoula in 1898?

A. Because I wanted to; I went there because I had my property there, I had my home there, and I liked the place much better than I did Butte for a home, and my wife's health was poor in Butte and for the sake of my family more than anything else I moved there.

Q. Now, how many years did you say that you had been living in Butte just before moving to Missoula?

A. I had been living here about three years just previous.

Q. And engaged in the real estate business here?

A. Yes, sir.

Q. And then, before that, just before this three years where had you been? A. I had been in Missoula.

Q. And how long had you lived there?

(Testimony of R. M. Cobban.)

A. About three years.

Q. And that was the only bit of time that you had been in Missoula at any time in your life, was it not, was this three years that you have now spoken about?

A. Yes, sir.

Q. And all the rest of the time you have lived in Butte?

A. I had been interested in Missoula for quite a number of years; I had been there for some two or three years in property, and I set out an orchard there.

Q. But your home was here?

A. Yes; but I had set out an orchard with the intention of making it my home some two years before I moved there the first time.

Q. But during the 20 years that you had lived in either Butte or Missoula, 17 of those years had been spent in Butte? A. About that time; yes, sir.

Q. Now, you say that you moved to Missoula in 1898 because you wanted to? A. Yes, sir.

Q. What business did you engage in immediately after moving to Missoula?

A. I engaged in the real estate business.

Q. Opened an office? A. Yes, sir.

Q. When?

A. I cannot tell you the month; I think in the fall of 1898.

Q. You don't know when you did it?

A. No, sir. It is pretty hard for a person to remember the month, the changes that have taken place in busi-

(Testimony of R. M. Cobban.)

ness—an active business man don't pay much attention to those things.

Q. You know, Mr. Griswold, who sits at my side here?

A. I do.

Q. You made his acquaintance in the following spring, did you not?

A. Yes, sir; in the spring of 1899.

Q. Where did you first see him?

A. I think the first time I ever saw him was at Clearwater.

Q. At his home? A. I think so.

Q. You went there for that purpose, did you not?

A. No, sir; I did not.

Q. To meet him? A. No, sir.

Q. At that time when you first met Mr. Griswold you had conceived the plan of buying up this land in the Blackfoot country, had you not?

A. I don't know that I had conceived any particular plan; I was in the market for the purchase of timber land.

Q. Had you bought any land that had been entered under the Stone and Timber Act previous to meeting Mr. Griswold?

A. I am not certain whether I had or not.

Q. You cannot recall a single case, can you?

A. I bought some land about that time but whether they were purchased prior to my meeting Mr. Griswold or afterward I cannot say for certain; and I am not certain whether or not some of those might have been taken under the Stone and Timber Act.

(Testimony of R. M. Cobban.)

Q. What had you done between the time of your returning to Missoula in the fall of 1898 and meeting Griswold in the spring of 1899?

A. Well, I had done a good many things.

Q. I mean on the subject matter of this suit; had you bought any of these lands? A. No, sir.

Q. You had not? A. No, sir.

Q. When did you first conceive the notion of buying these lands? A. Of buying those lands?

Q. Yes.

A. When title was given, when the receiver's receipt was issued, for the purchase of those particular lands.

Q. I did not refer in my question to that part of the case, Mr. Cobban.

A. Well, you had just mentioned it in the question previous.

Q. When did you conceive the idea of buying this land in the Blackfoot country?

A. Well, as an explanation, I want to say that in March of 1899 I went to the Coast, to Astoria. I saw the activity in timber lands; I saw what was being done, and I made something of a research and study into the timber conditions, and finally paid a man down there $100 to locate me on a timber and stone claim. I found that that was the custom there, and a great many people were following the business of locating people on lands. Then that got me interested in the timber proposition, and when I returned to Missoula I commenced looking into the possibility of getting hold of some timber land in that sec-

(Testimony of R. M. Cobban.)

tion of country, and made a trip up the Bitterroot or up the Blackfoot that spring to find out whether or not there were lands there for sale, and I found that there were quite a good many, and then decided to go in and make some purchases of timber and also to locate any persons that I could, where I could get paid on the same terms that I had paid myself down in Oregon.

Q. In other words Mr. Cobban, you found out how they were doing it in Oregon and Washington, and so you thought you would try it on in Montana?

A. Well, I don't know what you mean by the question. If you will explain it a little more fully I will answer it.

Mr. BICKFORD.—I think we will object to the question as propounded by counsel for the reason that the witness has said nothing about knowing the manner of proceeding in Washington, but only mentioned Oregon.

Q. Isn't Astoria nearly on the line between Washington and Oregon?

A. It is on the Oregon side of the Columbia river.

Q. And on the other side is Washington?

A. Yes, sir.

Q. Who was the man that you got this information from? A. What information do you desire?

Q. Well, as to the method of procedure in taking up lands under the Stone and Timber Act?

A. I haven't testified to anything of that kind, to any methods, except as to the payment of $100 for locating me.

Q. Who was the man to whom you paid the $100?

(Testimony of R. M. Cobban.)

A. I cannot now give you his name; I can get it from the memoranda or from the books.

Q. What did you do with your claim?

A. I still hold it.

Q. Did you ever see the land before you went with this man or located it? A. I certainly did.

Q. I mean except the time that you went with him?

A. No, sir; I did not; not until I went on the ground with him.

Q. And you used your right and hold it still?

A. Yes, sir.

Q. And is this 160 acres of yours in Oregon?

A. Yes, sir.

Q. And for that service you paid a man whose name you cannot recall $100? A. Yes, sir.

Q. Did you make any inquiries of anybody else besides the man who located you as to how you could proceed under this Stone and Timber Act?

A. I think—I had been familiar with the Timber and Stone Act before that time; I don't think I made any particular inquiries about that. I did make inquiries as to different ones locating claims and the prices they were paid for their services.

Q. Whom did you make that inquiry of?

A. Various ones there in Astoria; the names I cannot recall. The name of the one that located me was, I think, James Finley.

Q. When did you return home from Astoria after receiving this information?

(Testimony of R. M. Cobban.)

A. I am not quite certain wheter it was in March or in April that I returned; I was there in March. It might have been in April that I returned.

Q. And then you commenced to lay your plans for securing the lands as you have stated?

A. I commenced looking into the proposition what lands were available, timber lands that could be purchased or located.

Q. And was this trip that you made into the Blackfoot country the first trip that you had ever made up there?

A. No, sir, I went into the Blackfoot country when I lived in Missoula the first time, to look for a timber and stone claim.

Q. Did you secure any?

A. No, sir, I did not; I picked out one.

Q. For yourself? A. Yes, sir.

Q. How long were you up in the Blackfoot country looking around to see if you could secure this timber?

A. Well, I can't tell you; I made a good many trips into the Blackfoot country that season.

Q. I am calling your attention, now, to the first one, the first trip that you made.

A. I might have been there three or four days.

Q. Was that the time that you met Mr. Griswold?

A. I think not; I don't think I met him the first time I was up there.

Q. You had no acquaintance with him at that time?

A. No, sir, not that I now recollect; I may have seen Mr. Griswold—no, I had no acquaintance with him.

(Testimony of R. M. Cobban.)

Q. And as I understand you, you found out from your trip up into the Blackfoot country that there was timber up there that you could secure in the manner that you have indicated? A. Yes, sir.

Q. Did you also go into the Bitterroot country?

A. No, sir, not at that time; I had been up the Bitterroot Valley a good many times.

Q. Where else did you go other than the Blackfoot country that spring?

A. That is pretty hard to tell.

Q. I mean on this mission?

A. The Blackfoot country was the only place that I was looking at then.

Q. What was the next step that you took, Mr. Cobban, after having made this visit and having ascertained the fact that there was timber up there that could be secured?

A. Well, I took a number of options to purchase timber lands.

Q. Have you any of the names of those persons?

A. I think so.

Q. Will you please furnish them?

A. I could look it up and see in a few moments; it is slow work looking for it, because I have to go through a number of my papers—I don't know just which one to look into. Well, I don't know that I can either now tell just the ones that I obtained at that time, but about that time I got options to purchase the George Elliott timber and timber from a man by the name of Martin, and Amoreux, I think, was another man's name, and

(Testimony of R. M. Cobban.)

the timber of John Beaton, and one of the Morrises and quite a number of tracts that I had options on.

Q. Those were the first options that you secured?

A. I think they were the first ones, or among the first; there may have been some others. It is very hard—I had some two hundred and fifty transactions in about a year there, and it is very hard to fix all the dates, as to just when each one of them occurred.

Q. Of course, I can see that. You mean by that two hundred and fifty transactions is where two hundred and fifty entrymen and entrywomen, after they had made final proof and got the receiver's final receipt, conveyed to you?

A. No, sir, I don't mean that; it is only a guess; but I presume that there were two hundred and fifty different real estate transactions that I had during that season, and I don't know but what that is a small estimate. I mean by those transactions the purchase of various kinds of real estate and timber lands under different titles, the placing of scrip and the buying of scrip; those are all separate transactions.

Q. How many would you say were obtained under the Stone and Timber Act of the two hundred and fifty?

A. Why, I presume I may have purchased perhaps one hundred claims that the title was acquired under the Timber and Stone Act.

Q. That is one hundred that conveyed to you after obtaining the receiver's final receipt?

(Testimony of R. M. Cobban.)

A. Yes; some of them may have held it for a good while, and some of them may have just received it.

Q. And of those one hundred, how many were up in the Blackfoot country?

A. Well, it is only a guess, but I think perhaps there may have been seventy-five.

Q. And when you say one hundred, that also is a guess, is it not? A. Yes, sir, it is.

Q. And it might reach up to two hundred, might it not?

A. No, sir, I don't think so; I don't think that I bought that number of pieces of timber, the title to which was acquired under the Stone and Timber Act.

Q. Now, just at this time of your going up into the Blackfoot country, how long had you been acquainted with Mr. McLaughlin?

A. I don't know; I think I knew Mr. McLaughlin when I lived in Missoula the first time; I don't remember when I first became acquainted with him.

Q. Had you met him between the dates of your moving back to Missoula and your going up into the Blackfoot country the first time?

A. Well, I presume I had numerous times; I have no recollection of any particular meeting.

Q. You knew his business, did you not?

A. Yes, sir, I knew he was a lumber-man.

Q. Did you know of the organization of the Western Lumber Company?

A. I don't know whether I did or not at that time.

(Testimony of R. M. Cobban.)

Q. Well, you knew in the spring of 1899 of his being a director and manager of that company?

A. Yes, I did know of that in 1899.

Q. You knew of my friend, Judge Bickford, who is here as one of the counsel for the defendant being also a director of that company?

A. I don't think I did in the spring of 1899, no, sir.

Q. You have been acquainted with him for years, have you not? A. Yes, sir.

Q. And you have been acquainted with Mr. Wethey, who has been sworn here as a witness for the defendant for years, too? A. Yes, sir.

Q. You knew of Mr. Wethey's official relation to that company, did you not?

A. Well, I don't know whether I knew of it in March or not; I knew of it along in the early part of 1899, yes, sir.

Q. And you knew of their lumber-mills that they had? A. Yes, sir.

Q. Now, which of these men was it that you first spoke to in regard to the question of their buying your timber that you might secure, Wethey or McLaughlin or Bickford, or Senator Clark?

A. I did not speak to any one in regard to the timber that I might secure; I spoke to Mr. McLaughlin of the timber that I had for sale; he was the first one.

Q. When was that?

A. Well, I should judge—my impression was that

(Testimony of R. M. Cobban.)

it was in the latter part of the month of June, 1899, though I am not quite certain.

Q. Have you any way of making it possible for you to fix that time definitely? A. No, sir, I have not.

Q. What makes you think it was in the last part of June?

A. Well, I cannot tell you just why, but I think that was about the time.

Q. Why have you any more reason for fixing the latter part of June than the latter part of April?

A. Well, I know that I had not any timber to sell in the latter part of April, and I know I had no conversation with him until I did have timber to sell, and I think there was about that time intervening between the time that I first spoke to him about the timber that I had for sale and the time of the final actual sale.

Q. Then, it was already to be sold at the time that you spoke to Mr. McLaughlin?

A. I had timber for sale at that time. The whole amount of timber that I afterwards did sell to them I did not have at that time.

Q. Oh, no, I understand that, but I mean that you did actually have timber to sell and ready for sale as early as the latter part of June, 1899, when you did speak to Mr. McLaughlin? A. Yes, sir.

Q. That was the first time that you spoke to him about this matter?

A. I would not say that it was the first time, but it was along about then, yes, sir.

(Testimony of R. M. Cobban.)

Q. If you won't say that it was the first time, what do you mean by that?

A. Well, I mean to say that I might have spoken to him as early as the 10th of June, for all I know, but I think it was about the 20th of June.

Q. But you are positive that you did not speak to Mr. McLaughlin or the defendant or Mr. Wethey before the 10th of June, or the time when as a matter of fact you had timber ready to sell?

A. I did not speak to Mr. McLaughlin or any other of them. Mr. McLaughlin was the first one that I spoke to in regard to these claims that I had acquired, and I did not speak to him until I had timber for sale.

Q. And what timber, was it timber that you had taken up under the Stone and Timber Act?

A. No, sir, it was not.

Q. What timber was that?

A. It was titled timber; some of it may have been acquired by Timber and Stone Act, I don't know, but it was timber that was patented and for sale.

Q. And it might have been taken up under the Stone and Timber Act? A. Yes, sir, it may have been.

Q. All of it might have been taken up, might it not?

A. I could not say but what it might have all been taken under the Timber and Stone Act, but I am under the impression that it was taken up, most of it, as Homestead.

Q. How much did you have for sale at that time?

(Testimony of R. M. Cobban.)

A. I can't say; I had somewhere probably about six or seven million feet, perhaps more; I am not certain.

Q. Have you no data to show that fact?

A. No, sir, I have not.

Q. Why didn't you keep that data?

A. Because I would have to put down every little thing of that kind, if I did; I would have to have a stenographer right along with me, and keep a whole lot of books.

Q. Didn't you have a real estate office at the time?

A. I did.

Q. Didn't you keep a set of books? A. I did.

Q. And you bought six or seven million feet, you claim, and had it ready for sale, and now you say you have no data that will represent that transaction?

A. Well, I might hunt up those options, and I might hunt up the checks that I paid, and the receipts, but I cannot give it offhand.

Q. Your counsel seem to think that that is a laughable matter.

A. If you will furnish me a list of the questions that you want, I will try to take time and look up those things for you.

Mr. WALSH.—I hand you a list of the tracts embraced in the deed of July 29th, none of which tracts embrace any of the entries referred to in the bill of complaint.

Q. Have you no data from which you can tell me

(Testimony of R. M. Cobban.)

from whom you purchased these lands that you first had for sale and that you first offered to the defendant through McLaughlin?

A. I think that some of the lands that I first offered to Mr. McLaughlin may have been the claims of a man by the name of Warren, and the Laberty claims, and a claim purchased from Mr. Griswold, a brother of C. L. Griswold; I think those claims may have been in the first ones that I offered, as well as some options on land that I first spoke of.

Q. Now, I wish to understand the matter, and have you testify so that there will be no question but what you understand it, too, that although you were in the real estate business and had an office in the city of Missoula and you had purchased six or seven million feet of timber which you were offering to the defendant, there was no entry made at the time in any book which you kept, which represented that transaction?

A. Why, I have not said that.

Q. What do you say now?

A. I think I have that data, but it would take perhaps an hour to hunt that up from my books.

Q. Well, we have got until Eternity to find it out. Can you tell me the fact as to whether or not you did make any data in your books of account which you regularly kept in the course of your business at the time, within an hour or so or within a day or so?

A. Yes, I certainly have, when I paid out money I made some notation of it, for options.

(Testimony of R. M. Cobban.)

Q. Why did you say a moment ago that you made no entries at all of the fact?

Mr. BICKFORD.—We object because the witness has not so testified.

A. I haven't said that.

Mr. MAYNARD.—Again the stenographer is my relief.

The WITNESS.—If I answered so, the question was put in such a form that it certainly could not be understood by an ordinary man.

Q. Well, I beg that during the course of this examination you do not answer questions unless you understand what I mean. Now, then, if this first timber that you had to sell was ready for the market by the first of June, and some of it had been entered under the Stone and Timber Act, the negotiations or steps to be taken by the entrymen must have been at least two months before that?

Mr. BICKFORD.—We object to this for the reason that the witness has not stated at any time during the course of his examination that any of the timber concerning which he is now testifying was ready for the market about the first of June; we object to it for that reason.

Mr. WALSH.—Nor that any of it was entered under the Timber and Stone Act.

Mr. MAYNARD.—The stenographer's notes will

(Testimony of R. M. Cobban.)

show that it was in the early days of June, that it might have been in the early days of June, and that some of it, if not all of it, might have been taken under the Stone and Timber Act.

Mr. WALSH.—The record will show that he spoke to Mr. McLaughlin about the 10th of June; he did not say there was any timber ready for the market before then.

The WITNESS.—I had no timber to offer at that time as I remember except what had been—I think the greater part of it had been patented for some time; I certainly offered nothing that had not been proved up on, and I do not know that there was a timber and stone claim in the lot, but it might have been. The greater part of it might have been taken under the Stone and Timber Act, though I don't know that.

Q. If the greater part of it might have been taken under the Stone and Timber Act, what have you to say as to whether or not you have positive, definite knowledge as to some of it having been taken under the Stone and Timber Act?

A. I have no knowledge as to whether it was taken under the Timber and Stone Act; I don't know, and have so stated here before, that I did not know whether it was taken under the Timber and Stone Act or not.

Q. You had no talk with the people from whom you bought as to how they had acquired their land?

A. I may have had at that time; I presume I knew

(Testimony of R. M. Cobban.)

then, because I examined the abstracts when the title to it passed to me; I examined the abstracts, and I knew at that time, but I could not tell you to-day, because I do not remember.

Q. Who first told you that Mr. Griswold would be a good man to assist you in the business?

A. I don't know that anybody told me that.

Q. What information did you have about Mr. Griswold previous to the time of your making the contract with him on May 22d?

A. It is possible that Mr. Morris may have told me sometime in May that Mr. Griswold was a timber cruiser; I am not certain.

Q. Where were you when you entered into this contract?

A. I have not testified to any contract yet.

Q. Well, did you not enter into a contract with Mr. Griswold?

A. I entered into an agreement with Mr. Griswold; yes, sir.

Q. And that was on the 2d of May, was it not?

A. Somewhere about that time.

Q. I show you Complainant's Exhibit "A." Please examine the same and state if that is not a true copy of the contract that you made with Mr. Griswold?

A. I cannot tell you.

Mr. WALSH.—We object to this question on the ground that is not proper cross-examination, and the contract itself is the best evidence, and no proper foun-

(Testimony of R. M. Cobban.)

dation has been laid for the introduction of secondary evidence of the contract sought to be proven by the testimony of the witness.

Q. What is your answer? A. I don't know.

Q. Why don't you know?

A. Because I never compared that with the agreement.

Q. With the original agreement? A. No, sir.

Q. Well, you will compare it with me now with the original agreement.

A. I have not the original agreement.

Q. Where is it?

A. I don't know.

Q. Where was it when you saw it last?

A. It was in my attorney's hands.

Q. Which one? A. It was with Mr. Stiff.

Q. When was that?

A. Well, something over a year ago—no, I will take that back. It was some months ago, I don't remember when.

Q. Well, you saw it at the time of the settlement of the civil suit between Griswold and yourself, did you not? A. Yes, I did.

Q. It was delivered over to you at that time?

A. It was, or to my attorney.

Q. And has been in your possession or the possession of your attorney ever since? A. I think so.

Q. You knew of the fact that a written demand, which is a part of the record in this case, for the pro-

(Testimony of R. M. Cobban.)

duction of that original contract was made upon you at an early stage of this case, do you not?

A. No, I don't know that I do know that.

Q. Don't you know that there was a demand made?

A. No, sir.

Q. Weren't you here in the courtroom—right in this very room at the time?

A. I may have been, but I have forgotten it if there was a demand made.

Q. And you have made no effort to obtain that original agreement? A. I have not.

Mr. MAYNARD.—I again renew in behalf of the Government the demand which was made in writing and which is part of the record in this case, that the defendant, who now swears that the original agreement between himself and Mr. Griswold, of which the paper which he now has in his hand is claimed to be a true, full, complete and perfect copy, be produced by him, and that in the event of his refusing to produce the original written contract which was made in duplicate, that the Government shall insist that the contract which is in evidence in this case shall stand as the best evidence of the agreement which was entered into.

Q. So you state now that the contract is in the hands of Mr. Stiff?

A. Well, I think it is in the hands of Marshall or Stiff; I am not certain.

Q. Haven't you seen it during the progress of this hearing in the possession of Mr. Bickford?

(Testimony of R. M. Cobban.)

A. I may have done so.

Q. Don't you know or haven't you reason to believe that the contract which you say you may have seen in the hands of Judge Bickford is now in his possession?

A. I don't think it is.

Q. Why don't you think it is?

A. Because Mr. Bickford did not retain any of those papers that he may have looked over of mine, and Marshall & Stiff are in the habit of examining papers for me at different times in connection with my cases, and I think that that paper was perhaps left with them; I think it is quite certain that it was.

Q. Why, if the paper was taken from their hands and brought here into this courtroom and used for the purpose of comparing the agreement which is now in evidence, was it returned again?

Mr. WALSH.—We object to this question because it assumes a large number of facts which have not been proven, and which do not exist.

A. I never knew of any comparison, and I do not know that that contract was ever in this room at any time. I think that answers your question.

Q. You wrote the agreement out yourself, did you not, Mr. Cobban? A. I did.

Q. And it was made in duplicate?

A. Yes, sir—that is, I wrote part of the agreement out.

Q. What part did you not write?

(Testimony of R. M. Cobban.)

A. There were some things in connection with that that were not written out.

Q. What do you mean by that?

A. Well, I mean that there were quite a number of things in connection with that contract that were verbal matter.

Q. Oh, the contract, then, was partly in writing and partly in parol? A. Yes, sir.

Q. But all of the written part which was signed by yourself and Mr. Griswold is set forth in Exhibit "A," in this case, is it not?

A. I don't know whether it is or not.

Q. Well, you have examined the same, and are you able to point out any errors or inaccuracies of any kind?

A. No, sir; not from memory; I cannot tell.

Q. Now, why, at the time that you met Mr. Griswold and entered into this written contract in duplicate, did you have part of it rest in parol?

A. For the very reason that on that day there was a great deal of conversation preceding the drawing of the agreement, and a great many things were talked about at that time, and when it came to drawing the agreement, the time was very short. My recollection is that I left that afternoon and only had something like two hours, a short time, in which to prepare the original and the copy, and in the writing of that agreement a number of things which had been agreed to and talked over were not made a part of the written instrument.

Q. That is, as I understand you, you in a matter of

(Testimony of R. M. Cobban.)

this importance made a written contract with Mr. Griswold in duplicate and signed it, knowing at the time that you had not embraced in the contract all of the things that you desired to put in it and which formed a part of the contract, and that the reason was that you were in a hurry?

Mr. WALSH.—He has not said anything of the kind; in fact what he did say contradicts anything of the kind. I don't see any reason why you want to repeatedly put words into the witness' mouth that he has not said, for the purpose of entrapping him.

Mr. MAYNARD.—I have not attempted it once.

Mr. WALSH.—Yes, you have.

Mr. MAYNARD.—Read the question to the witness, the last question and answer.

(Question and answer read.)

Mr. WALSH.—Now, I submit to counsel himself whether the statement of the witness is not absolutely irreconcilable with the assumption that any part of the agreement was purposely left out of the instrument.

Mr. MAYNARD.—I leave that to any man on earth that the witness stated that there were quite a good many things talked over and that he was in a hurry and that he did not put them in because he was in a hurry; there could not be anything simpler than that.

The EXAMINER.—Ask your questions, and let the witness answer.

(Testimony of R. M. Cobban.)

The WITNESS.—It was not left out because I was in a hurry, but in the hurry of drawing up the agreement some things that had been talked over were forgotten and overlooked at the time. I think that almost any practicing attorney has a good many occasions to find out in preparing papers that they have done the same thing, left out very important things, but not intentionally.

Q. Let me ask you for information. Are you an attorney? A. No, sir; I am not.

Q. How long did Mr. Griswold work for you under this contract?

A. Mr. Griswold was working in a way at times for a year and a half, I think—not necessarily under this contract.

Q. State now, Mr. Cobban, what were the principal things that he did for you under this contract during this year and a half of service?

A. The principal thing that he was employed to do was to find out who had titled land to sell, or where he could take an option on the same at a reasonable price to do so and turn it over to me. He was also to look and report to me where there were good bodies of timber that could be scripped or that were available Government lands; those were the principal things that he was employed to do?

Q. Who else, to your knowledge, worked for you during this same period, either by direct employment or by employment under Griswold in this same work?

(Testimony of R. M. Cobban.)

A. No one.

Q. No one was hired by you during this year and a half that Mr. Griswold was working to do something of the same work?

A. You didn't ask if some of the same work; you asked about the same work.

Q. Well, some of the same work, then?

A. Well, I had Davey Morris working for me, and James Hambly; and E. R. Kilburn worked for me at different times during that period. I had Albert Jemison do some work for me, and a brother of Albert Jemison's also did some work.

Q. What is his name?

A. I think it was Charlie, but I am not certain. One of the Dodds did quite a little work in that line.

Q. What was his name?

A. Harrison Dodd, and I may have had some others, but those were the principal ones.

Q. Cannot you now recall the names of those?

A. No, sir.

Q. Was not Mr. Sparks working for you?

A. No, sir.

Q. Not at all?

A. No, sir. I sometimes borrowed him for a day or two, but he was not working directly for me.

Q. He did not enter your employ, then, until after this year and a half?

A. I think he was in my employ for a short time during—no, I don't think in that year; I think it was in

(Testimony of R. M. Cobban.)

1900, the fall of 1900, that he was in my employ for a short time.

Q. How long was that time that you call a short time? A. Well, probably two weeks.

Q. That was all the time that he worked for you?

A. Yes, sir.

Q. In the fall of 1900?

A. Yes, except as I borrowed him once in a while during the season for some special purpose.

Q. Who did you borrow him from?

A. Mr. McLaughlin.

Q. Were you borrowing Mr. Sparks from Mr. McLaughlin during the spring and early summer of 1901?

A. No, sir.

Q. When was the last time to your knowledge that you did borrow Mr. Sparks?

A. Well, it was during the season of 1899.

Q. I thought you fixed it sometime during the fall of 1900?

A. Not that I borrowed him, but that he was in my employ.

Mr. BICKFORD.—The testimony of the witness was that in the fall of 1900 he hired Mr. Sparks to work for him for a period of about two weeks.

Q. Was that the last time that he had been in your service, in the fall of 1900, either by way of direct employment or by borrowing him from Mr. McLaughlin?

A. It is the last time that I remember now; I may have employed him sometime after that, but I have no

(Testimony of R. M. Cobban.)

recollection of it at the present time. If you can give me some idea, something that might refresh my memory, I might say that I have; I have no recollection of it now.

Q. Now, how much means of your own, Mr. Cobban, did you take with you down to Missoula when you went there in the fall of 1898?

A. Well, the most means that I had was in a good name and a good credit; in ready cash I don't know just what I did have.

Q. Did you have any real estate? A. Yes, sir.

Q. What did you own at that time?

A. I owned a good deal of property in the city of Butte, and I had property in various parts of the country and I had some property in Missoula, and I owned a great deal here in Butte.

Q. A great deal? A. Yes, sir.

Q. Can you recall some of this great deal; can you tell us what it was?

A. I owned an interest in the Clark Addition; I owned considerable in the Cobban Addition; I owned some property in the Valley Addition; I owned part of the Carte Blanche Addition, and two or three placer mineral entries down in that part of the country, embracing quite a good many acres that was unplatted, I could not tell how much; I owned some lots in the Northern Pacific Addition; I owned some in the Park Addition and I owned something over one hundred lots in the Pleasant View Addition, some property in the

(Testimony of R. M. Cobban.)

Rice Addition. I had quite a good many mining claims here, a number of interests in mining claims—an interest in the Scottish Chiefs; eleven-twenty-fourths in the Rising Sun; some in the Lone Star; an interest in the Damon, and a good many interests that I cannot now recall.

Mr. BICKFORD.—Don't forget the Yellow Jacket.

Q. Were you better off or worse off by reason of these holdings?

A. I had holdings of the value of a good many thousand dollars.

Q. That you regarded as such?

A. Which I have since realized several thousand dollars from.

Q. How much have you reduced your possessions and realized on it in cash on these holdings that you have named since?

A. Well, I presume—I don't know just how much, but I presume I have realized $35,000 from what I had in Butte at that time. I do not say that that was all clear, but there has been probably that amount returned in cash.

Q. And how much have you left?

A. Well, I don't know that that is any of your business.

Q. Well, I don't know that it is. The only reason why I am inquiring into the matter—

Mr. WALSH.—We understand the reason fully.

(Testimony of R. M. Cobban.)

The EXAMINER.—Let the counsel state it. I want the reason, and Judge Knowles certainly will.

Mr. MAYNARD.—It was fully gone into on direct examination, Mr. Cobban, as to the resources that you had at the time in making the purchases of this real estate. You have shown all the different sources of income and they are now part of the record in this case; the notes which you gave to the First National Bank of Butte, and gave to these other banks which I shall call your attention to later. You also in addition swore in reply to counsel's questions that you had means of your own which enabled you to make these purchases. Now, I seek to find out, and that is my business, as to what that amounted to.

Mr. WALSH.—He has fully answered about that question and while it may be somewhat embarrassing to you, I am not responsible for that.

Mr. BICKFORD.—The question propounded to the witness was not what resources he had in 1899, but what he had left of the resources.

Mr. MAYNARD.—Certainly.

Mr. WALSH.—What he has now?

Mr. MAYNARD.—What he has now of the resources that he has claimed as having then.

Mr. WALSH.—That is wholly immaterial.

(Testimony of R. M. Cobban.)

Mr. MAYNARD.—Nobody else except anxious counsel would ever assert such an opinion.

Mr. WALSH.—The witness seems to entertain that opinion, and we think he is right.

Q. Now, then, what I want to know is, Mr. Cobban, if this $35,000 that you cleaned up from these holdings that you have now testified about represents it all?

A. I have not said that I cleaned up $35,000 from those holdings.

Q. I know you have not, but you have received that much. We will inquire later as to how much was net on that. I think that I have explained it to you so that you will see that it is not a mere idle curiosity on my part; I don't care whether you had ten millions or nothing; it is nothing to me.

A. I do not think that the amount of money that I have now or the amount of property I have has any relation to the transaction in suit here. If the amount is inquired into as to what I had at the time of this, why it seems to me that it would be—I am perfectly willing to answer any question that is fair, but I do not propose to have my private business gone into; that has no relation to this case.

Q. No, I don't desire to go into it; I don't care anything about it. I don't seek to inquire now into your present worth, Mr. Cobban.

A. I understood that to be the question.

Q. No, it was not; the question was as to what there

(Testimony of R. M. Cobban.)

was left of the holdings that you testified that you possessed at the period to which I have called your attention.

Mr. WALSH.—We object to that as immaterial and not proper cross-examination and as being just exactly what counsel said he did not want to inquire of, and that is, what Mr. Cobban now has.

Q. Does the $35,000 represent the value of the holdings that you had at the time, less the indebtedness, I mean?

A. Well,I considered myself worth about $50,000 at that time.

Q. Very well. Now, then, you say that you have reduced to possession from these different real estate holdings $35,000?

A. Well, I presume in that neighborhood; I haven't looked it up to see. I had some mortgages included in that and notes, as well as property.

Q. How much was that encumbered—how much had to be taken out to pay the encumbrances—$30,000?

A. No, sir.

Q. In that neighborhood?

A. No, I don't think as much as that. It is very hard for me to answer, because in my business there have been continual purchases made of other properties and changes about, and oftentimes these sales would not come in the way of cash, but by exchange, and I cannot say at that time just what cash I got out

(Testimony of R. M. Cobban.)

of it nor where it was used or what it went into. I have a great deal of property at the present time, and all I can say is that I considered myself worth over and above my indebtedness at that time somewhere from $40,000 to $60,000, and the property that I left at that time in the city of Butte has nearly all been parted with, and been used in my business elsewhere.

Q. Very well. Now, Mr. Cobban, of that amount you say that you got about $35,000 from your holdings, and that you are not prepared to say but what from $25,000 to $30,000 of that was used for the purpose of turning it right over and paying the mortgages that existed on the property?

Mr. WALSH.—He didn't say anything like that.

Mr. MAYNARD.—If he didn't say that, I want him to say it, that is all, one way or the other.

A. Well, I don't think I had mortgages to anything like that amount; I don't know how much of that went into my business.

Q. To pay off the indebtedness?

A. No, nor I don't know how much of it went into my business below.

Q. So that as a matter of fact what you stated in the first instance was about the truth of it, and that was that your capacity and ability to buy rested upon your having a good name and a good credit.

A. Yes, largely.

(Testimony of R. M. Cobban.)

Q. Now, then, Mr. Cobban, you bought during that season of 1899 and sold to the defendant in this case upwards of one hundred and seventy-five million feet of timber, did you not?

A. I have not made any footings, sir, and I do not know the amount.

Q. Did you not hear Mr. Wethey's testimony?

A. I heard a portion of it; I was absent one day during his testimony.

Q. Did you not hear him testify on this subject?

A. My impression now is that I did hear him make a statement, a guess at it, but I don't think I heard him say positively how much.

Q. Well, assuming that Mr. Wethey's testimony is correct, that he bought from you between one hundred and seventy and one hundred and seventy-five million feet, that required a large sum of money to make this purchase, did it not?

Mr. BICKFORD.—Now, we want to object to this as not proper cross-examination, for the reason that it is concerning nothing that was brought out in the examination in chief, and for the further reason that the witness is asked to testify concerning testimony which he has not said that he heard and concerning a fact he has no recollection or knowledge of independent of what he may have heard testified to upon the witness-stand, even conceding that he had heard the testimony of the witness, Wethey.

(Testimony of R. M. Cobban.)

Q. Well, Mr. Cobban, have you no personal knowledge of your own as to the number of feet of timber that you conveyed to Mr. Clark?

A. Not accurately; I presume I sold him during the two years 1899 and 1900 between one and two hundred million feet of timber at various times. You will understand, however, that at no time did I have the amount of money invested that would represent the whole of that, but I would acquire land and either sell or borrow money on what I had, and I would then have more money for operations.

Q. Now, Mr. Cobban, when you say that you sold the defendant between one hundred and two hundred million feet, is that the best knowledge that you have on the subject; cannot you get any closer to it than that?

A. I could not without taking the figures; the figures have all been given here; they are a matter of record here. Every transaction shows the number of feet that was conveyed, and the record show it fully.

Q. And you were here at the time?

A. Yes, sir.

Q. And in the light of the fact that you sold the land, and as you say, it has been gone thoroughly over and you have seen the records and heard it, still you say that you are not able to come within seventy-five million of it one way or the other?

A. Not to give you accurate figures; it is a matter of

(Testimony of R. M. Cobban.)

record here, and I do not see why a person should be asked to guess about it when it is a matter of record.

Q. I did not know but possibly you might have some knowledge of your own, and that you might know in a matter of this kind—that you might come by your own knowledge within fifty million feet of what you sold to the defendant.

A. I cannot tell within fifty million feet.

Q. Now, then, your counsel have introduced in evidence the different promissory notes which you gave which you swore you that you used in part to buy this timber with. Now, how much are you able to say that you borrowed from the First National Bank of Butte?

A. I never figured it up; I cannot tell you.

Mr. MAYNARD.—Will you be kind enough to give the witness the notes given to the First National Bank of Butte?

The EXAMINER.—There are two notes in there; the Gaylord notes; they are payable at the First National Bank, and I put them in; they are numbered from 316 to 330, inclusive.

Q. Are you able to say, Mr. Cobban, how many of these notes that were made to the First National Bank of Butte are renewals in whole or in part?

A. I don't think there were any of them, or but very few that were renewals; those were as a rule paid up in full, and perhaps a new loan negotiated; there

(Testimony of R. M. Cobban.)

may have been instances where those were renewals, but not as a rule.

Q. Can you point out from this series of notes those that were renewals?

A. I cannot. I might be able to, but I would not say for certain. I cannot tell without taking a little time; the greater part of them were not renewals, especially the larger notes. One for $26,000 I know was not a renewal, and the larger notes were not renewals.

Q. But just which one of the larger notes that are not renewals you are unable to say?

A. I do not know that any of them were renewals, but some of the smaller ones might have been; the larger notes I do not think that any of them were renewals.

Q. Now, then, do you know who the officer was of the bank that you negotiated these loans with?

A. Yes, sir.

Q. Who was he?

A. I negotiated some of them with E. B. Weirick, the cashier, and part of them with Mr. A. J. Davis, the president, and it is possible that on almost all of them it might have been with both of those gentlemen.

Q. So that it was either Mr. Davis or Mr. Weirick or both? A. Yes, sir.

Q. Now, then, was this money that you borrowed from the First National Bank for a specific purpose?

A. Yes, in a way. I did not have to use every dol-

(Testimony of R. M. Cobban.)

lar of it in any particular way; in fact, in borrowing the money there was no specific way that I was to use that for at all. The basis of the loans as a general thing were other lands that I had, or my business.

Q. Well, was there any collateral put up to secure the payment of these notes? A. No, sir.

Q. It was purely on the strength of the makers of the notes as they appear here?

A. There might have been in one or two instances, I might have assigned some interest that I had, but I do not think any of these notes were secured by mortgage, unless possibly there might be a $20,000 note in there that was secured by a mortgage.

Q. Have you now any absolute recollection on the subject as to whether or not this $20,000 note was?

A. If you will let me see those notes again, I will see whether that note is in there. I don't think any of those notes to the First National Bank were secured by mortgage. The two notes to J. E. Gaylord that are among these were secured by a mortgage, but I don't think that any of these others were.

Q. You have no recollection of having given any security of any kind as collateral for these loans?

A. I may have assigned some interests that Mr. Davis and myself had in some property to help to secure them.

Q. But you don't know whether you did or not?

A. No, sir.

(Testimony of R. M. Cobban.)

Q. When did you first have a conversation with Mr. Wethey about aiding you in securing a loan?

A. Why, I am inclined to think about October or November, 1899; I rather think that the first conversation in regard to a loan was about that time.

Q. Are you positive?

A. I never spoke to him until I made the loans that have already gone in evidence here, the note of $10,000—and I don't remember the date of that; it is a matter of record.

Q. You had no conversation, then, with him except with reference to the $10,000 loan that was secured at the bank of Clark & Bro.?

A. And later on or about that time the loan of November that has been testified to.

Whereupon a recess was taken until 2 o'clock P. M.

R. M. COBBAN, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Since you were on the stand this forenoon, Mr. Cobban, have you refreshed your recollection at all upon the subject as to whether you gave any security of any kind for these notes, to the First National Bank of Butte?

A. No, sir, I have not.

Q. Are you able to say as to how much of the proceeds of this series of notes which I hold in my hand, which constitute all of the exhibits in the case, so far as the First National Bank is concerned, was used for the purpose of buying these lands?

(Testimony of R. M. Cobban.)

By Mr. WALSH.—Before answering that question, I will tell the witness now that he has a right to look over the exhibits held by counsel, and pointed by the counsel to the witness, for the purpose of refreshing your recollection as to any matter that may be necessary, and in order to answer the question intelligently.

A. Well, I can simply say that a large part of it; I cannot tell just how much.

Q. They were borrowed by you as you testified this morning, and there was no—nothing said by you to the bank officials at the time about securing the money on these notes, which you felt called upon to use for any specific purpose?

A. No, sir, the only statement was that they knew, and I had so stated, that I was buying considerable tracts of timber land; that I was in that business, as well as in the general real estate business.

Q. Well, now, did you have a bank account in the bank? A. I did.

Q. And when you borrowed money it was credited to you on your account? A. Yes, sir.

Q. What is that? A. Yes, sir.

Q. And you checked against it?

A. Yes, sir, as a rule.

Q. What is that?

A. As a general thing, yes, sir.

Q. And that was so as a rule, which covered all these pieces of paper? A. Yes, sir.

Q. Well, now, haven't you got the checks returned to

(Testimony of R. M. Cobban.)

you, and the stubs of your original check-books which show absolutely for what purpose this money was checked out?

A. Well, I have most of those checks, and most of those check-books; I don't know that I have all of them. I know that I haven't all of the stubs, but I think, perhaps, I have all of the checks; I have tried to keep them.

Q. Well, are those checks here? A. Yes, sir.

Q. Are you able to say from an examination of those checks as to how much of them was used for the purpose of buying lands in this case?

A. I probably have fifteen hundred checks, there, and it was—it would probably take two or three days' time to go through and check them up, to see just how much was used for the purpose of purchasing timber.

Q. Well, haven't you in anticipation, during all of these months, when you knew you were to testify in this case, made such an examination?

A. Why should I? I didn't expect to be persecuted in this manner. I am willing to produce anything that you ask for, but I am not supposed to go and pick out everything that a counselor can possibly think of and ask me for without having an opportunity to prepare beforehand and anticipate his wants. If you will give me a list of what you want I will try to answer later on.

Q. Very well.

A. But it is almost impossible and it seems to me unreasonable to expect a man to prepare all this data beforehand, without knowing what you are going to ask.

Q. I can see that very well, but I thought that inas-

(Testimony of R. M. Cobban.)

much as you, with your counsel, had introduced these notes in evidence under the claim that you had paid for the lands out of the proceeds of these notes, and as a matter of fact you say that they were charged up to your account, and checked out, that you would anticipate the fact at once, without any regard for the order in which they were asked, and state what the fact was with reference to it.

By Mr. WALSH.—We move to strike out the statement of counsel as argumentative and no question propounded to the witness, and no question that the witness is called upon to answer.

By Mr. MAYNARD.—I was just saying that in response to Mr. Cobban's criticism.

Q. Now, what I want to know is, Mr. Cobban, inasmuch as you have these checks, I want to know from the checks themselves as to how much of this money was paid for the purchase of this timber, and which you used in your business?

By Mr. WALSH.—We object to the question propounded to the witness because the witness has already answered the question propounded by counsel to the witness.

By Mr. MAYNARD.—I say this now, in answer to the suggestion made by the witness, that I will give him all the time he needs to get what I want.

By Mr. BICKFORD.—I want to state to counsel now, that I don't think the counsel knows what he wants; I

(Testimony of R. M. Cobban.)

want to say further, that if the counsel would indicate what he wants, I have no doubt in the world but what the witness will be glad to give it to him.

Q. So that, so far as these notes are concerned, Mr. Cobban, and the notes that you got from the other banks, which you used in the same way, you are unable to answer that now, as I understand it?

A. I don't see any sense to the question.

Q. As to what you used the proceeds for, until you had made an investigation and examination of these checks?

A. But just what proportion of it, I cannot say; but the greater part of went for the purpose of purchasing timber, as I have already stated.

By Mr. MAYNARD.—Well, I would like to have you produce those, Mr. Cobban.

By the WITNESS.—I find that upon an examination of the checks that it would require an expert bookkeeper for a considerable time to segregate them, and to ascertain just exactly how much went for any particular claim.

Q. Do you know how much the aggregate of the notes of all the banks amount to?

A. No, sir, I do not.

Q. And you are unable to state in anyway now, as to how much of the proceeds of all these notes was used in the purchase of timber?

A. Well, the greater part of it.

Q. Well, now, if you haven't got the time or the ability without the use of an expert to find out from your own

(Testimony of R. M. Cobban.)

books for what purpose they were used, I ask that they be produced and I will furnish an expert to aid you.

By Mr. WALSH.—Let it be stated here that the counsel for the defendant does not admit any right or power in the counsel upon the other side to direct the witnesses upon the other side to obey his desires as to what he shall do or shall not do. There are certain limitations to this thing, and we make this suggestion in the case of the witness upon the stand, that he has been repeatedly directed by the counsel as if he had some authority to command him to do this, and we desire now to say to the counsel that if he desires these papers he will have to take the proper steps to get them.

By Mr. MAYNARD.—That is all right.

Q. Do you know how much money you paid for the first timber that you sold the defendant?

A. I do not.

Q. You don't know how much the sum was?

A. No, sir.

Q. Have you any means of finding out?

A. Yes, sir, I think I can find that out.

Q. I refer now to the sales which were made on or about the 29th day of July, 1899.

A. I think I can find out. I cannot tell now at the present time off hand, though.

Q. And do you know where you got the money to pay for them?

(Testimony of R. M. Cobban.)

A. I borrowed the money, most of it; some of the money, I suppose, I had in my own bank account.

Q. And you don't know how much that was?

A. No, sir.

Q. Now, then, did you pay for these lands without knowing what you were going to do with them after you bought them?

A. I paid for some of them beforehand; had options on others, before I knew what I was going to do with them.

Q. And without knowing to whom you could sell them after you had acquired title to them?

A. Yes, sir, I paid out a good deal of money before I had any knowledge of where I could sell. I am not certain that I even had a deed that was executed at that time, but I paid out money on account of the purchase of a number of those contracts.

Q. Well, now, isn't it true that you had entered into correspondence, and had correspondence with the defendant in this case, directly, or through Mr. McLaughlin, as early as May, 1899? A. I don't think that I did.

Q. You are not prepared to say that you did not, are you?

A. No, sir, I should hate to say that I did not, but I don't think that I did.

Q. You had several conversations with Mr. McLaughlin, did you not?

A. I don't know that I had several before the sale was actually made; I presume I had two or three conversations with Mr. McLaughlin.

(Testimony of R. M. Cobban.)

Q. Well, you know that you did, do you not, Mr. Cobban? A. I do not.

Q. That you don't know that you had any conversation with Mr. McLaughlin with regard to the sales before they were actually made?

A. I stated that I had conversations with Mr. McLaughlin, but how many conversations, I have no means of now telling.

Q. Well, in these conversations, what did you talk to him about?

A. I offered to sell him some lands that I either owned outright or had options on for the purchase.

Q. Whereabouts were you when you had this conversation?

A. I cannot tell you; I presume in my office or on the streets in Missoula.

Q. They were all in the city of Missoula, you think?

A. Yes, I think that Mr. McLaughlin either came to Butte with me, or I met Mr. McLaughlin here at the time that I testified to as having talked with W. A. Clark.

Q. Well, you remember distinctly of being with Mr. McLaughlin at that time, do you not?

A. I would hate to swear now that Mr. McLaughlin was present at that conversation, but I believe he was.

Q. And you have had conversations with him on the subject before that? A. I had had one or more.

Q. You had had one or more? A. Yes, sir.

Q. Well, didn't you in this conversation which you

(*Testimony of R. M. Cobban.*)

had, or these conversations, one or more, as you have stated, inform him of what your purpose was?

By Mr. WALSH.—We object to the question for the reason that it is indefinite.

A. Well; I think I would like to have it made a little more definite as to what purpose you mean.

Q. I mean the plan that you had gotten on to at Astoria, and that you were going to carry out the same thing in Montana?

A. Well, I don't know that there was any particular plan that I was going to carry out, other than I was in the real estate business, and when I could find a body of timber that I could purchase; I didn't go to the extent of saying I was going into a business of that kind at that time.

By Mr. BICKFORD.—He wanted to know about your talking it over with Mr. McLaughlin.

By the WITNESS.—I don't think there was any talk about any plan, or what I was going to do, or anything of the kind, other than an offer to sell him certain lands that I owned.

Q. And that you had options on?

A. Yes, sir.

Q. Mr. Sparks was working for Mr. McLaughlin, was he not, at that time?

A. I am not certain whether he was or not; he was shortly after, or for the Western Lumber Company, I think.

(Testimony of R. M. Cobban.)

Q. You met him while he was doing estimating on this timber, did you not; while he was selecting it for you?

A. He did some estimating.

Q. Well, you know that all of the timber that you selected was estimated by Mr. Hambly, for yourself, and that Mr. McLaughlin had Mr. Sparks up there doing some work, do you not?

A. I think he was doing some estimating on some lands.

Q. And you saw Mr. Sparks up in the woods in the Blackfoot country, did you not?

A. I did during the season of 1899.

Q. You saw him repeatedly up there, did you not?

A. Yes, sir.

Q. Now, didn't you have any conversation with Mr. Sparks in regard to what you were doing up there?

A. Oh, I presume I did a good many times.

Q. And Mr. Sparks, who was doing the estimating for the defendant in this case, knew what was going on, did he not?

By Mr. BICKFORD.—We object to the question, because it presupposes an answer of the witness that has not heretofore been given, and that is, that Mr. Sparks was estimating for the defendant, and that the witness has given testimony on the line of the question propounded to him, that Mr. Sparks was estimating for Mr. McLaughlin, and for the further reason that it is irrelevant and immaterial and not proper cross-examination.

(Testimony of R. M. Cobban.)

By Mr. WALSH.—And further, in asking the witness a question, and in using the words, "what was going on" is indefinite as to what the counsel means by the expression, "going on," and he ought to explain to the witness what meaning he desires. In the same way, he uses the word "selected," with reference to lands which the witness testified that he had purchased or had options on, and the question is indefinite and calculated to mislead the witness, and it is not proper cross-examination.

A. Well, I shall refuse to answer that question until it is made clear to me as to what you wish to know.

Q. Well, namely, that you were locating men and women up there on claims under the Stone and Timber Act?

A. I don't know whether Mr. Sparks knew any such thing or not.

Q. Do you think it would be possible for him to be up there as he was, and knowing what was taking place there, without knowing it?

By Mr. WALSH.—We object to that because it does not make difference what the witness thinks.

By Mr. MAYNARD.—Well, I guess it does.

By Mr. WALSH.—The question does not call for any fact from the witness, and it is irrelevant and immaterial, and not proper cross-examination.

Q. Without knowing the fact that you were locating people up there?

(Testimony of R. M. Cobban.)

A. I don't know what Mr. Sparks knew; I have no doubt but what he knew that a great many people were taking up timber and stone claims, but as to the extent of his knowledge in any way, I have no means of knowing it.

Q. Very well. Now, do you know how it happened that as you say, a great many people were at that time taking up claims under the Stone and Timber Act?

A. I believe it was the custom in Montana, as well as in Washington, Oregon and Idaho, for a great many people, as the timber comes into the market, to avail themselves of the right to take up claims under the Stone and Timber Act. It wasn't anything new to Montana, that the people took up claims about that time. At about that time the lumber industry came to such a point that there was a larger chance for people to handle them than perhaps in years before in Montana; there had been a great many claims taken up in years past in both the Blackfoot country and the Bitterroot country, under the Stone and Timber Act.

Q. How did it happen then, Mr. Cobban, that if this was so well understood, that you, who had been in the real estate business for upwards of twenty years preceding this time, had to get this knowledge in Astoria?

A. I informed you that I had know of the Timber and Stone Act, and that I went some seven or eight years ago, while I was living in Missoula, to take up a timber and stone claim in the Blackfoot, but at that

(Testimony of R. M. Cobban.)

time the selection that I made was taken by the State. After having selected the ground that I wanted, the State came in and took it away from me, and about that time—about the year 1898 and '99, new townships were surveyed and put on the market, to enable persons to make locations, that were not before this able to locate. Another thing is, perhaps, a fact, that unless a person is looking into the matter closely, a person does not know where to go to find claims, and they are willing to pay for that information oftentimes.

Q. Well, wasn't this interest that was created, or that existed, as you say, created by the fact of the service that was being rendered you by Mr. Griswold?

A. What is that? I don't catch the meaning of the question.

Q. Well, this interest that was created or existing, was by reason of the service that was rendered to you by Griswold, wasn't it?

A. Why, I don't know that it was in particular; might have been to a certain extent.

Q. Wasn't it a part of his employment under the contract to cause it to be known throughout that country that persons could make entries under the Stone and Timber Act? A. No, sir, it was not.

Q. That was no part of his employment?

A. No, sir, in no way, shape or manner.

Q. Wasn't it a part of his employment that he should find suitable locations upon which entries could be made?

(Testimony of R. M. Cobban.)

A. Part of his duties was to find and report to me on timber claims—timber land.

Q. Very well, and now, and after the report was made to you of these timber lands, what were you to do then?

A. I was to—I desired to avail myself of placing scrip on there if I could do so, or, if I had any parties that wanted to take up timber and stone claims, that I wanted to send up there, he was to show them the land.

Q. Well, did you exercise your option of sending people up there to Mr. Griswold to show them the lands? A. I did.

Q. How many?

A. I couldn't say now; I sent several up there.

Q. Just give me those that you can remember, Mr. Cobban.

A. I sent or accompanied Charles Moss, Mr. Barrott, Mr. Chattin—B. Frank Chattin, and I may have sent others, I don't know.

Q. I show you the printed bill of complaint in this case, for the purpose of enabling you to refresh your recollection on the subject, and ask you to look it over and see if, aided by the names there, you can tell all that you desire to in regard to those that you either sent or accompanied; or, would you prefer to have me read it, Mr. Cobban?

A. You can call them off as you come to them.

(Testimony of R. M. Cobban.)

Q. Very well, I will read them over. Charles Cloutier? A. No, sir.

Q. John Gillies? A. No, sir.

Q. Martha M. J. Doney? A. No, sir.

Q. Edward B. Doney? A. No, sir.

Q. Thomas Pelkey? A. Yes, sir.

Q. B. Frank Chattin? A. Yes, sir.

Q. Elijah W. Hoyt? A. No, sir.

Q. Charlotte S. Hoyt? A. No, sir.

Q. Albert F. Muchmore, Guy W. Muchmore, Oliver E. Muchmore or Elizabeth A. Muchmore?

A. No, sir.

Q. Alfred Stewart? A. No, sir.

Q. Nels O. Opsata? A. No, sir.

Q. John B. Catlin?

A. No, I don't think I sent Mr. Catlin up there, although I knew of his going.

Q. Belle Bryan-Gillies, formerly Bryan?

A. No, sir.

Q. Leonard Barrott? A. Yes, sir.

Q. Edgar Lehman? A. No, sir.

Q. Leliah T. Bryan? A. No, sir.

Q. May Hawthorne? A. No, sir.

Q. Harriet Watson? A. No, sir.

Q. Marion B. Watson? A. No, sir.

Q. Charles H. Moss? A. Yes, sir.

Q. Katie Watson? A. No, sir.

Q. Edward Dodd? A. No, sir.

(Testimony of R. M. Cobban.)

Q. Cora Dodd? A. No, sir.
Q. Doc E. Watson? A. No, sir.
Q. Charles B. Sperry? A. No, sir.
Q. Thomas H. McConnell? A. No, sir.
Q. Hiram Dodd? A. No, sir.
Q. Harrison Dodd? A. No, sir.
Q. Matilda Dodd? A. No, sir.
Q. Lizzie Dodd? A. No, sir.
Q. Vital Cyr? A. No, sir.
Q. Levi B. Cyr? A. No, sir.
Q. Nellie J. Ehle? A. No, sir.
Q. Jacob F. Jemison? A. No, sir.
Q. Albert Jemison? A. No, sir.
Q. Joshua C. Gilman? A. No, sir.
Q. George P. Jemison? A. No, sir.
Q. Sarah Yarger? A. No, sir.
Q. Emma Dildine? A. No, sir.
Q. George Dildine? A. No, sir.
Q. Matilda Eddy? A. No, sir.
Q. Abraham J. Jemison? A. No, sir.
Q. James W. Wheaton? A. No, sir.
Q. Mary Eddy? A. No, sir.
Q. Herbert Eddy? A. No, sir.
Q. Daisy L. Chattin? A. Yes, sir.
Q. John L. Deering?
A. John L. Deering, I couldn't say whether I sent him on to one or not.
Q. John Saleen? A. Yes, sir.

(Testimony of R. M. Cobban.)

Q. C. C. Snyder? A. Yes, sir.
Q. Frank P. Arey? A. No, sir.
Q. Dan McGillis? A. No, sir.
Q. Elvira M. Hardy? A. Yes, sir.
Q. John H. Hardy? A. Yes, sir.
Q. Effie M. Kilburn? A. No, sir.
Q. Arnold Mickels? A. No, sir.
Q. Clara Belle Mickels? A. No, sir.
Q. Mary J. Eddy? A. No, sir.
Q. Lavina I. Gilman? A. No, sir.
Q. Recy M. Jemison? A. No, sir.
Q. James Mize? A. No, sir.
Q. Laura Roll? A. No, sir.
Q. Charles H. Jemison? A. No, sir.
Q. Calvin Yarger? A. No, sir.
Q. Zora Jemison? A. No, sir.
Q. John G. Hendrix? A. No, sir.
Q. Jennie Mize? A. No, sir.
Q. Martha E. Wright?
A. I knew of her going, but I didn't send her.
Q. Lizzie T. Catlin?
A. I knew of her going but I didn't send her.
Q. She is the wife of Major Catlin, is she?
A. Yes, sir.
Q. Robert Starkie? A. No, sir.
Q. Albert Ehle? A. No, sir.
Q. Elizabeth A. Reeve? A. No, sir.
Q. Mary A. Starkie? A. No, sir.

(Testimony of R. M. Cobban.)

Q. John Murtaugh? A. No, sir.

Q. Harriet Bryan? A. No, sir.

Q. Evelin Jemison? A. No, sir.

Q. Now, those that you have answered yes to, you either sent up there or went with them yourself?

A. Or in some instances, knew of their going, as I have stated.

Q. And those that you have answered no to, you had no knowledge of the fact that they had made locations?

A. Not until after they had made filings.

Q. After they had made filings?

A. No, sir, or possibly I will modify that; perhaps in some instances I might have known prior to some of them making their filings, but not until after they had been on their lands and made their selections.

Q. And those selections and locations were made by Mr. Griswold or some one in his employ?

A. I couldn't say as to that. Some of them were, I presume; a great many others, I think—I don't think that Mr. Griswold or any one in his employ had anything to do with them.

Q. Now, did you say that Charles Cloutier was one that you went with? A. No, sir.

Q. Or sent? A. No, sir.

Q. You knew nothing about it?

A. Had nothing to do with it in any way, shape or manner.

(Testimony of R. M. Cobban.)

Q. Well, Thomas Pelkey and B. Frank Chattin were two, were they not? A. Yes, sir.

Q. Did you go with them?

A. I think I was in the Clearwater at the time they were there. Whether I went with them or not, I am not certain. I didn't go onto the land with them.

Q. Where did you see him—where did you first see Thomas Pelkey? A. I didn't say.

Q. Well, where did you meet him?

A. I presume I met him in Missoula.

Q. Have you any acquaintance with him?

A. Yes, I have known Mr. Pelkey for quite a number of years.

Q. How old a man is he?

A. Well, I presume he is about—I should suppose he is—he was about twenty-six years of age at that time.

Q. About twenty-six at that time?

A. Yes, sir.

Q. And an unmarried man? A. Yes, sir.

Q. Now, then, I wish you would tell me how it came that you sent Mr. Pelkey up there?

A. Mr. Pelkey asked me if I knew where he could get a timber and stone location. I told him that I thought perhaps I might be able to find one for him, and there was some talk as to what the expenses would be, and I told him I would charge him a hundred dollars for finding him a location. He told me at the same

(Testimony of R. M. Cobban.)

time that he wouldn't have the means to prove up on the claim without borrowing the money, and asked if it would be possible for me to help him in the way of a loan, and I told him I would. That is what led up to the proposition.

Q. And where did this conversation take place?

A. At Missoula; I don't know just where.

Q. Was he in company with Mr. Chattin?

A. No, sir, not at that time.

Q. Mr. Pelkey, this young man, twenty-six years of age, came to see you in regard to it?

A. He talked with me about it; I haven't said that he came to see me about it. I don't like to have so many misstatements of what I have said; I don't think it is fair to a witness at all on the part of the counsel.

Q. Well, what did you say?

A. Well, I said that I saw him in Missoula.

Q. Then do you mean to say that you went to see him instead of his coming to see you?

A. No, sir, I didn't go to see him, but I presume that perhaps we met, and I don't remember what the circumstances were, or how we happened to come together.

Q. Or how the subject matter was referred to?

A. No, sir, I don't remember.

Q. What was he doing at the time?

A. Mr. Pelkey had been working for me part of the time, gardening. He was working in that neighborhood, in the neighborhood of the Rattlesnake, garden-

(Testimony of R. M. Cobban.)

ing for different ones. Whether he was working for me at the time, or not, I am not certain; I don't remember; but during that season he did work for me off and on.

Q. Worked for you as a day laborer?

A. Yes, sir.

Q. Well, did he know about your business at the time?

A. I don't know that. He knew that I was in the real estate business, and very likely knew I had been up in the timber, and very likely knew of some of my purchases; I don't know as to that. It would be hard for me to tell what a man knew three or four years back.

Q. You won't say but what you spoke to him about the matter first, will you?

A. I won't say but what we might have discussed the timber proposition; I may have spoken to him about timber in general; I wouldn't say as to that.

Q. And that there was an opportunity for him to exercise his legal privilege of taking up a hundred acres of land under the Stone and Timber Act?

A. I don't think I suggested anything of the kind.

Q. Well, how would this man—this man that was working for you, as you have stated, how would he suggest the matter to you?

By Mr. WALSH.—Just a moment, Mr. Cobban. Unless you know how he would come to suggest it to you, you are not called upon to answer that question.

(Testimony of R. M. Cobban.)

A. Well, if he was working for me at that time, he would be very apt to know where I had been, if I had been up in the Blackfoot in the timber country, and it would be one of the most natural things in the world for him to talk about it and ask me something about it, or say something about it.

Q. This man that is working for you by the day, would be apt to know about your private business—about your business?

By Mr. WALSH.—Wait a moment, Mr. Cobban; don't answer that, Mr. Cobban, at all. We object to the question for the reason it is not proper cross-examination; it is merely argumentative, and not calling for any fact from the witness.

Q. But, as the result of this conversation, whether you went to him or whether he came to you, Mr. Pelkey went up into the Blackfoot country and made a location, and you sent him up there?

By Mr. BICKFORD.—We object to that because the witness has not stated that he sent him up there.

By Mr. MAYNARD.—He said he had sent him up there. I beg counsel's pardon.

A. Well, if I have given any such testimony, I wish to have it changed at once. I simply gave Mr. Pelkey information as to where he could go and find a timber and stone claim.

Q. And you say that the men that you have an-

(Testimony of R. M. Cobban.)

swered yes to, were the persons that you either went with yourself, or sent up into the country?

A. Well, that might have been answered in that way, but I wish to state right now that so far as the sending was concerned, I simply mean that I gave them this information about where to go to get this land.

Q. That is what you mean, is it? A. Yes, sir.

Whereupon further hearing was adjourned until Thursday morning, May 8th, 1902, at ten o'clock A. M.

HENRY N. BLAKE,
Examiner in Chancery.

Thursday, May 8th, 10 A. M.

Hearing resumed pursuant to adjournment.

The witness, R. M. COBBAN, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Calling your attention, Mr. Cobban, to the entry made by Thomas Pelky which we were considering last night when we adjourned, what have you to say this morning as to whether Pelky spoke to you first about the matter or you spoke to him?

A. I have no distinct recollection of it, but I am quite confident that I did not speak to him about it in any way advising him to take up a claim or anything of that kind.

Q. Well, what did you say to him?

A. I answered you that I did not remember what the conversation was.

(Testimony of R. M. Cobban.)

Q. And you cannot remember what he said to you?

A. Other than what is contained in my statement to him that I could show him or tell him where he could get a location, and have it shown him, and he was to pay me $100 for locating him on the land and I was to loan him the money for proving up.

Q. Did you direct him to the location?

A. I did.

Q. Who did you send him to?

A. My recollection is that we were both at Clearwater together and that Mr. Griswold had someone show him the location for me.

Q. And was B. Frank Chattin along at the same time? A. Yes, sir.

Q. You went with Pelky and Chattin up to Mr. Griswold's, did you not?

A. I don't know that I did; we were there together.

Q. When did you first meet Mr. Chattin in regard to the matter?

A. I don't think that I had any direct conversation with B. F. Chattin in regard to that at all, but I did with his brother, John Chattin, and it was on similar lines to Mr. Pelky. I had told Mr. John Chattin that I would locate parties for $100 apiece on claims, find them claims or locations, and when necessary make the loans to them for proving up, for $100. I don't think I had any direct conversation with B. F. Chattin in regard to it at all.

Q. Did you know B. Frank Chattin at that time?

(Testimony of R. M. Cobban.)

A. Yes, sir, I did.

Q. What was he doing?

A. Mr. Chattin was farming part of the time and hauling wood, carrying on farming operations, doing general work. He owned or was interested with his brother and father in several tracts of ground and was cultivating those in places, and also working at odd times for others.

Q. That is, he was a day laborer?

A. Well, part of the time, yes, sir, and a farmer.

Q. Did Thomas Pelky have any real estate to your knowledge at the time?

A. None, unless it was an interest in the estate there.

Q. And as to whether or not he had any interest in the Pelky estate, you are not prepared to say?

A. No, sir.

Q. Did you know at the time of his having any personal estate? A. I did not.

Q. And did you know at the time of Chattin having any personal estate?

A. Yes, sir, I knew that he did have.

Q. What did he have?

A. Well, he had an interest in fourteen acres of ground right above my place, about a mile and a half above my place on the Rattlesnake, and he had an interest in a farm of one hundred and sixty acres, and I think he was interested in the farm machinery and teams, etc.

(Testimony of R. M. Cobban.)

Q. Do you know what his interest was?

A. I cannot now tell; my impression is that it was a one-third interest in this properties.

Q. How did you happen to be up at Clearwater when these men were there?

A. That is something I cannot tell; I may have gone up with them or I might have been there; I was there very often, up the Blackfoot; I may have been there on other business; I am not certain.

Q. Who made the locations for them; you said that someone under the direction of Mr. Griswold—who was the man? A. I cannot say.

Q. You did not go out to the locations with them?

A. I am inclined to think that John Gilles went out with them, but I am not certain; it was someone that Mr. Griswold sent with them at my request.

Q. Had you seen these locations before?

A. I don't think that I ever saw the locations; I don't remember that I ever saw them.

Q. They had been reported to you by Mr. Griswold as good locations?

A. Mr. Griswold told me at the time that I went up there, I think, that he had some good locations chosen, yes, sir.

Q. Do you know whether you returned with Pelky or not? A. No, sir, I do not.

Q. Do you know who named his witnesses?

A. I presume he named his own witnesses after con-

(Testimony of R. M. Cobban.)

sulting with—he may have consulted with some of us as to who was familiar with the ground, who he could name, who would be best to name; that might have been done. I think he might have consulted with myself and Mr. Griswold to find out who was familiar with the ground and who had been on the ground, I don't know, or he may have named his witnesses himself.

Q. He did name as witnesses, reading from the record, Volume V, page 2407, B. Frank Chattin, T. A. Price, C. L. Griswold and David Morris. Chattin was the man that accompanied him up there, was he not?

Mr. BICKFORD.—The witness has not testified that Chattin went with Pelky, and we object to this because it is assuming a fact as stated by the witness which has not been so stated by him.

A. I think that Chattin and Pelky went together.

Q. And David Morris, he was one of the men that you testified was in your employ?

A. David Morris was in my employ a portion of that season.

Q. And C. L. Griswold, another, and who was T. A. Price?

A. T. A. Price was a grocer in Missoula.

Q. How did he happen to be named as a witness?

A. I can't tell you.

Q. Reading from the record on page 2407, it appears that Chauncey L. Griswold and B. Frank Chattin were Pelky's witnesses at the time of his making final proof.

(Testimony of R. M. Cobban.)

Do you know how Mr. Griswold happened to be a witness in that case?

A. I suppose that Mr. Pelky perhaps asked him to be; I cannot tell you.

Q. He was not sent there by you?

A. No, sir, not without the consent of the parties. Pelky or Chattin may have asked me—which one are you asking about?

Q. Pelky.

A. I presume he asked Mr. Griswold at that time whether he would act for him; I don't know.

Q. You say that Mr. Griswold, by reason of his employment for you under the contract, went there as a witness? A. I didn't say that.

Q. What do you say now, whether he did or not?

A. No sir, not by reason of his employment by me.

Q. Wasn't he there at your request?

A. It is possible he might have been, but at the request of Mr. Chattin also.

Q. If it is possible that Mr. Griswold was there acting as a witness for Pelky at your request, how was that; why did you request him to do that?

A. I have not said that I did request him, and I don't know that I did. If I did, it was because Mr. Pelky requested that he be his witness, and another thing, the consideration of $100 for locating these people was to give them what assistance I could in their making their entries, and with that understanding it is very natural that they would consult me and ask who

(Testimony of R. M. Cobban.)

would be their witnesses, who would be the best people for witnesses, who knew the ground and were familiar with it, and it may be that I had suggested these names; they certainly named them themselves, but it may have been by suggestion.

Q. Who paid for this Pelky land in the land office?

A. Mr. Pelky paid for it himself, that is, it was money that was borrowed from me for that purpose, but I think Mr. Griswold paid the money into the land office; that is my recollection, he paid it in for Mr. Pelky and at his request.

Q. And for Mr. Chattin also? A. Yes, sir.

Q. Final proof was made on the Pelky and Chattin claims at the same time?

A. Yes, sir, that is my recollection.

Q. And you think that Mr. Griswold paid the money into the land office? A. I do; I think so.

Q. Whose money was it that he paid in?

A. It was their money.

Q. Where did they get it?

A. They borrowed it from me.

Q. How did Mr. Griswold happen to have it, then?

A. Because it was paid to Mr. Griswold to be turned into the land office for the specific purpose that they had borrowed for.

Q. Where did you pay this money to Mr. Griswold?

A. Well, I am not certain where it was; I rather think it was at Ovando, but I am not certain.

(Testimony of R. M. Cobban.)

Q. And the money that was paid at Ovando was the amount of $2,780, was it not?

A. No, sir, it was not; I never paid Mr. Griswold any such amount. His statement to that effect is false.

Q. The amount was $2,740 instead of $2,780?

A. Any such statement is an absolute lie.

Q. How much did you pay him?

A. I don't think that I ever paid him at any one time exceeding $1,100, though it is possible that I might have exceeded that by a little.

Q. I shew you Complainant's Exhibit "C" and ask you whose handwriting this exhibit is in?

A. I cannot say for certain.

Q. Don't you know that that is in the handwriting of Major Pound?

A. It looks like his writing, yes, sir.

Q. Major Pound was in your employ when this was made out, was it not?

A. I don't know; I presume he was if he made it out.

Q. In this account contained in this exhibit, C. L. Griswold in account with R. M. Cobban, I call your attention to the charge contained therein: "Cash July 1st, 1899, $1640; July 11th, check, $1000; July 11th, cash, $100. That aggregates $2740." What were those payments for?

A. I cannot now tell you what those payments were for. Another thing, the date as shown on the bill may not be the date of any of these payments for the very reason that oftentimes the dates that are given on a

(Testimony of R. M. Cobban.)

bill are the dates of the posting on the journal and not the dates of the actual payment.

Q. Well, that account is an account made out by Major Pound, who was then in your employ, and these charges are against Mr. Griswold aggregating $2,740?

A. That does not purport to have been the same day.

Q. Well, within a few days.

Mr. BICKFORD.—We object to the statement of counsel that it was within a few days; the dates shown upon the exhibit concerning which the witness is being examined at this time are July 1st, and the next date thereunder is the 11th, but whether of July or August does not appear from the accounts.

Q. Can you explain the reason for which this money was paid to Mr. Griswold?

A. I cannot now; I could by taking a little time.

Q. Don't you know that part of this money contained in those three charges against him on your statement was used by him in paying for the Pelky and Chattin claims?

A. I am not certain, though my recollection is that a part of the $1,000 item was the money that was used for that purpose.

Q. Was he instructed by you to use a part of that $1,000 to pay for this land? A. Yes, sir.

Q. You had made arrangements then with Mr. Pelky before that, had you not? A. Yes, sir, I had.

Q. Whereabouts were you when you made the arrangement?

(Testimony of R. M. Cobban.)

A. I told you the other day where I was, in Missoula; he arranged for the loan before even going to the claim, if he should need it.

Q. That is, that he could have the money?

A. Yes, that he could have the money as a loan, that I would loan him the money.

Q. How much was he to have?

A. Well, whatever was required; whatever money he needed for proving up on that claim.

Q. And paying for the land?

A. Of course; proving up on the claim includes that.

Q. What would be the other items that you counted in?

A. Whatever necessary expense there was connected with it, if he required that amount.

Q. You say he did not have any money at the time to buy this land, to pay for any of the expenses?

Mr. WALSH.—I didn't hear that testimony.

Mr. MAYNARD.—Mr Cobban was on the stand yesterday afternoon.

Mr. WALSH.—He did not testify yesterday afternoon about the financial standing of those people. You asked him about that this morning for the first time.

Mr. MAYNARD.—He swore yesterday that Mr. Pelky was in his employ as a gardener, working by the day, and that he came to see him in regard to the matter and to see if he could take up the land, and that he had no money at the time and that he wanted to make arrange-

(Testimony of R. M. Cobban.)

ments for getting the money that was necessary to pay for the land and to pay all the expenses from Mr. Cobban; that is what he swore to.

Mr. BICKFORD.—Now, we submit that the statement of the witness on yesterday with reference to Mr. Pelky was, and with reference to the Pelky entry, was that Pelky came to the witness to see if he could take up a timber claim and borrow the necessary money to do so; that the entryman, Pelky, had been employed as a gardener for the witness, and that he knew him, and we submit that the stenographer's notes will not show that the witness has testified that Pelky had no money at any place in the testimony of the witness.

A. I supposed that he did not have money or he would not have requested the loan.

Q. Well, what was the result of the negotiations for the loan?

A. The result was that I agreed to let him have the money for that purpose and I did let him have it.

Q. How much did you let him have?

A. I don't know now just what amount, but I should judge in the neighborhood of about $475.

Q. What was the $75 for?

A. I don't know the amount; I know that all of the items that were paid out for Mr. Pelky at his request on the loan were kept track of and submitted to him and they were all authorized by him, and it included the expense of publication, $400 at the land office and something like $11 for land office fees and testimony, and I

(Testimony of R. M. Cobban.)

think the tickets and the expense of going to Helena on the two trips, and yet I am not certain about that; he may have paid some of those himself.

Q. You kept track of all the items of expense?

A. Yes, sir.

Q. And presented it to him and he acknowledged that they were true? A. Yes, sir.

Q. Have you got that statement now?

A. I have not.

Q. Do you know where it is?

A. No, sir. They were usually kept as a memorandum on a little memorandum book of my expenses from time to time, and I would usually make up a slip showing what had been paid out and when the transaction would be closed in any way, why then those slips usually were destroyed.

Q. So that it was a continuing expense from the time of the first filing up to the return of Mr. Pelky to Missoula from making his final proof, was it not?

A. It was a continuing expense, you say?

Q. Yes. You would not know definitely just what it would be until his return from Helena when he went to make his final proof, and his railway fare and his hotel expense and so on were all ascertained?

A. No, sir, I would not.

Q. So that as a matter of fact you would not know positively what the loan would be until after he had proved up?

(Testimony of R. M. Cobban.)

A. Well, I could tell sometimes; yes, I could approximate that, but not exactly.

Q. Reading from the record on page 2407 of Volume V, it appears that the question is, "What was the date of the final proof in the Pelky case? A. It was August 15th, 1899." I show you Complainant's Exhibit No. 164, being the certified copy of the deed made on August 16th, 1899, between Thomas Pelky, unmarried, and Robert M. Cobban of Missoula, and acknowledged before Mr. Smith on that day. Please tell me what the circumstances were which led up to Mr. Pelky's conveying this land which he had proved up on the day before to you on the day after?

A. I don't remember whether I closed the deal with Mr. Pelky or not, but I think it is more than likely I did. I either made the offer myself to Mr. Pelky after his return from Helena and after having proven up, that I would give him a certain amount instead of taking a mortgage, if he preferred, that I would give him so much for his land and the offer was accepted. Whether this offer was made directly by myself to Mr. Pelky or whether it was made by someone in the office in my employ under my instructions I am uncertain, but I think that I negotiated with Mr. Pelky myself, and Mr. Pelky concluded that he would rather accept the offer that I made him for the purchase of his land than to give the mortgage and hold the land.

Q. And so, as a matter of fact, he gave you that deed for the land, and did not give you a note or mortgage?

(Testimony of R. M. Cobban.)

A. He did not.

Q. And how much did you pay him?

A. I do not now recollect.

Q. Have you no recollection of paying him any money at the time that he executed and delivered that deed to you?

A. No, sir; I presume that I did, though.

Q. How much do you presume that you did pay him?

A. I think that I allowed him about $675; I think somewhere about that.

Q. Have you any remembrance as to whether you paid him in a check or in currency?

A. I have not.

Q. You don't know whether you did or not?

A. No, sir.

Q. Haven't you the check book which you kept about that time here with you?

A. I have some check-books here with me, but I am not certain whether I have for those deeds; I may have.

Q. I would like to have you show me the book, either the check or the stub in the check-book.

Mr. BICKFORD.—Before he does that, it will be necessary for the witness to say whether he has the check-book or not; he has not stated that he has it yet.

The WITNESS.—I do not know whether I have it here or not; I may have.

Q. You have your books here. Won't you be kind enough to see?

(Testimony of R. M. Cobban.)

A. I have the stub here; that shows on August 16th, 1899, I paid Thomas Pelky $82.

Q. Will you let me see that stub, please?

A. Here it is.

Q. Can you find the check?

A. I was looking for it. Yes, there is the check.

Mr. MAYNARD.—I desire to offer in evidence this check of Mr. Cobban's, which reads as follows: "The first National Bank of Missoula, Montana. Pay to the order of Thomas Pelky $82. Missoula, Montana, August 16th, 1899, R. M. Cobban," and endorsed: "Thomas Pelky" and "Paid by the bank August 17th," the stamp of the bank being endorsed thereon.

Mr. BICKFORD.—I was going to suggest that the same result could be obtained, inasmuch, as this check is read into the record, without encumbering the Master's bundles with these checks; there will be no dispute, I apprehend, about this, and we are piling up exhibits here very rapidly, and as it is read into the record and made a part of the printed record, I do not see that any good purpose can be subserved by introducing it in evidence.

The MASTER.—In these matters I follow the wishes of counsel.

Mr. MAYNARD.—It is perfectly satisfactory to me to have it read into the record and stand as an exhibit that way by stipulation, rather than to encumber the record.

(Testimony of R. M. Cobban.)

The MASTER.—Very well.

Mr. MAYNARD.—And the stub of the check reads as follows: "Pay to Thomas Pelky $82, August 16th, 1899, for timber $80, for work to date, $2."

Q. On the payment of that check to Mr. Pelky and the delivery of the deed to you, Mr. Cobban, that closed the Pelky deal, did it not?

A. Yes, but I think that there was some more that was paid him at that time than the check that was given here.

Q. But that is the only check that you have?

A. Yes, sir.

Q. And what it was you do not remember now?

A. No, sir.

Q. Now, Mr. Cobban, I call your attention to the next claim of Mr. B. Frank Chattin, and will you be kind enough to state to me what negotiations you had with Mr. Chattin on this subject?

A. As I stated before, I do not think I had had any particular talk with B. Frank Chattin, though there was some talk about timber lands among the neighbors there, and I had a conversation with John Chattin, a brother of B. Frank Chattin, and he seemed desirous of getting a claim for himself and his brother wanted to get a claim, so he said, and I told him at that time that I would find locations for them and assist them all I could for $100 a claim, and that if they needed the money to prove up on with I would loan it to them, and his brother came, as I understand, in accordance with

(Testimony of R. M. Cobban.)

the conversation I had had with John Chattin, and his location was shown him on the same conditions as the Pelky affair, and it was so understood, that the money was loaned to him and the transaction was carried on very much the same way as the Pelky transaction.

Q. Yes. That is, they both went to Helena together? A. Yes, sir.

Q. And the money was paid into the land office for Mr. Chattin by Mr. Griswold, the same as it had been paid for Mr. Pelky? A. Yes, sir.

Q. And as you say, without going into these details unnecessarily, they were substantially the same?

A. Yes, sir.

Q. The Pelky and Chattin claims, as far as the payments were concerned? A. Yes, sir.

Q. Did this Mr. John Chattin, B. Frank Chattin's brother, take up a claim, too?

A. He did.

Q. When did he go up, before or after?

A. I don't recollect.

Q. How many of the Chattin brothers took up claims under the Stone and Timber Act that you know of that were conveyed to you?

A. Just the two brothers.

Q. When did you first see Mr. B. Frank Chattin himself?

A. Well, I am not certain but what B. Frank Chattin may have gone from Missoula with me, or I may have met him up there at Clearwater; I am not certain.

(Testimony of R. M. Cobban.)

Q. Had you had any negotiations in person with B. Frank Chattin previous to your going up with him to the country?

A. Well, I think there is no doubt in the world but what the same matter may have been talked over and was talked over with B. Frank Chattin that there was with the brother, but I have not any recollection of that, only that I know that he understood it just as I had explained it to his brother.

Q. That you were to locate him and get him a claim under the Stone and Timber Act and take general charge of the matter and aid him in every way as far as the publication of notices and so on for and in consideration of the sum of $100?

A. Yes, sir, I was to give him what assistance I could in the matter.

Q. I read from the record on page 2408 and find that the same witnesses that were used in the Pelky case were used in the Chattin case. What do they call that, a joint notice?

Mr. BICKFORD.—A combination notice.

Q. Yes, what is called a combination notice, isn't it?

A. Well, if there are two or more applicants where the publication is embodied in the same notice, that is called a combination notice.

Q. And the final proof was made on the 15th of August, 1899, upon this land, and I now show you

(Testimony of R. M. Cobban.)

Complainant's Exhibit No. 97, being a certified copy of the deed from Frank Chattin to you—I find, Mr. Cobban, that they were separate notices printed but the same witnesses were used, so it was not a combination notice. I ask you to examine that deed, which was dated the day after the day of the final proof and acknowledged on the 23d. Do you remember any of the facts and circumstances connected with that deed?

A. Yes, sir.

Q. What were they?

A. Before the execution of the deed I am not certain whether I saw Mr. Chattin on the 16th of August or not, or whether, as I stated before, the offer to purchase was made by someone in my employ for me on my instructions. Anyway, on the 16th of August Mr. Chattin agreed to sell his claim to me rather than to give a mortgage to secure the amount that he owed me, either on a direct offer from me or from one of my employees, but I saw him after that and before the final execution of the deed and talked the matter over with him, and that was his wish, rather, to sell at that time than to mortgage.

Q. How was it that this deed was dated the next day after his return from Helena and the delay in the execution occurred until the 23d?

A. My impression is that I was not personally present on the 16th, that the conversation with him and the offer from me was made through someone else for me, though I am not certain as to that, and the offer

(Testimony of R. M. Cobban.)

was accepted, but it was not closed up unti I did see him. That is my recollection of it.

Q. I see; and that the offer was made under instructions from you? A. Yes, sir.

Q. By someone in your employ? A. Yes, sir.

Q. And the deed was drawn up by Mr. Smith, but was not acknowledged by reason of your absence from town and your inability, of course, not being present, to pay for it?

Mr. BICKFORD.—The testimony of the witness is not that the deed was drawn up by Mr. Smith, and if the witness has so testified I have failed to hear it.

Mr. MAYNARD.—Very well.

The WITNESS.—The deed was not drawn up by Mr. Smith.

Q. Who was it drawn up by?

A. I could not say; I presume it was drawn in my office.

Q. Why do you say that it was not drawn up by Mr. Smith, and that you presume it was drawn up in your office?

A. Because I was in the business of drawing up deeds, and I did not, as a general thing, go out to have someone else draw them, not when they were executed in Missoula; if I did not draw them up, someone in my employ was in the habit of drawing up the deeds, of drawing all land conveyances.

Q. How was it that these instructions had been

(Testimony of R. M. Cobban.)

given to someone in your office to draw up this deed on the 16th?

A. There were no instructions given to draw up the deed on the 16th, but they may have had instructions that if Mr. Chattin wanted to sell rather than to give a mortgage, that when he came there they could make him an offer to purchase the land instead of giving a mortgage.

Q. And such instructions had been given by you to your office force?

A. I had in some instances given such instructions.

Q. That when the entryman came around with his final receipt to make him the offer?

A. In some instances I gave instructions of that kind, when I was going to be away, when I was not going to be there, some proofs that I knew were going to be made—I would give instructions to Mr. Pound or someone in my employ that if the party wanted to sell after he had proven up and had a title that he could make him an offer of a certain amount.

Q. Now, will you be kind enough to give me the check that you gave Mr. Chattin?

A. I did not give Mr. Chattin a check.

Q. You did not? A. No, sir.

Q. What did you give him?

A. Mr. Chattin was owing me at that time and I gave him a receipt on the debt that was due me.

Q. On some land that he had bought from you?

(Testimony of R. M. Cobban.)

A. Yes, sir.

Q. And how much was the receipt for; how much did you credit him on your real estate deal?

A. Well, the amount was, I think, in the neighborhood of $675 that he was to pay me, that he owed me, and I balanced the account and I think I gave him a receipt for $100 or in that neighborhood.

Q. And the $100 applied on the purchase of the real estate? A. Yes, sir.

Q. That was the credit that he received?

A. Yes, sir. He received credit for the full $675 or whatever it was.

Q. Then he did not receive any money at all from you personally at that time, did he?

A. Why, certainly; he had received it if we had paid it out for his benefit, it was received by him just as much as if it had been put in his hands, and he had paid it out. It was paid out under his instructions.

Q. But as a matter of fact it is true that no portion of this money had been paid to him in person?

A. Well, I am not certain about that; there might have been part of that money that had been handed to him personally.

Q. But you have no recollection of having paid him any? A. No, sir.

Q. And that purchase price was paid into the land office by Mr. Griswold? A. Yes, sir.

Q. When did you recollect of seeing Mr. Chattin—

(Testimony of R. M. Cobban.)

Mr. BICKFORD.—I think I want to object to that proposition propounded to the witness by counsel that the money for the Chattin entry was paid into the land office by Mr. Griswold, on the ground that the witness has not heretofore so testified, and that the assertion of counsel is a mere assumption on his part of a condition of affairs which has not been testified to.

Q. When did you see Mr. Chattin after his going to Helena?

A. Well, I may have seen him on the 16th; I am not certain whether I did or not, but I saw him within a few days thereafter, I am certain.

Q. I understood you to say that you thought the delay in the acknowledgment of the deed was by reason of your absence from town?

A. I am not certain of that, whether I was or not.

Q. And there had been no talk with him prior to the 16th about his conveying land to you?

A. No, sir, none whatever. Further, I might have seen Mr. Chattin on the 16th. We both live out of town quite a little ways; I might have then purchased his claim on the 16th and drawn up the deed on that day, but it might not have been convenient for Mr. Chattin to come to town. I might have seen him on the road or near my place; I am not certain as to that, but I know that I saw him before the final execution of the deed.

Q. There was no suggestion, then, that had been

(Testimony of R. M. Cobban.)

made in any way by you or Mr. Griswold that immediately after his return from Helena and the making of his final proof he was to go to your office and convey the land to you and receive this credit of $100?

A. There was certainly no suggestion on my part in any way, shape or manner, and no such thing was ever intimated in any way, that he was to do that, or that he was to convey to me. As to Mr. Griswold, Mr. Griswold's instructions were positively that he never should make an offer or talk about buying a claim before a person had a right to sell the same, and if he ever did that it was certainly contrary to my instructions. What Mr. Griswold might have said I don't know; I know he said a great many things that were absolutely false. I am not responsible for what he might have said.

Q. It was not with your knowledge and consent?

A. No, sir.

Q. And it was directly against your instructions?

A. If any conversation of that kind was had by Mr. Griswold it certainly was contrary to my instructions.

Q. Because you knew at the time that if he did that, that would be a criminal offense?

A. I certainly did, yes, sir; I knew that, and I had no idea and no intention of violating the law myself or of having anyone else do so.

Q. Mr. Chattin gave you this deed and did not give you a mortgage or a note? A. No, sir.

(Testimony of R. M. Cobban.)

Q. And when this deed was delivered to you and you gave Mr. Chattin a receipt for $100, that closed the deal with him?

A. It was a satisfaction; we made a settlement there on the whole proposition. It was gone over, about what the expense had been, what moneys I had paid out for him, on account of the loan, and I made him a proposition of about $675, and my recollection is that after paying those expenses it left him in the neighborhood of $100.

Q. And those expenses were substantially the same as in the Pelky case? A. Yes, as I recollect it.

Q. Paying for the publication of the notice and the land office fees and so on and so on? A. Yes, sir.

Q. And the payment for the land?

A. As I recollect it, yes, sir.

Q. I next call your attention to the case of Cash Entry No. 6204, by Charles H. Moss, one of the persons that you say that you either sent, or accompanied, Charles Moss, Mr. Barrett and Mr. B. Frank Chattin—you say I may have sent others, I don't know. It seems, reading from the record on page 2464 that the witnesses were C. L. Griswold, David Morris, Harry C. Dorman and R. M. Cobban, and that Mr. Dorman and Mr. Griswold appeared at the time of the final proof.

Mr. BICKFORD.—We move to strike out the statement of counsel as not embodying a question and as being irrelevant and immaterial and as purporting to

(Testimony of R. M. Cobban.)

contain a statement of the witness which has not heretofore been made by him.

Mr. MAYNARD.—I am simply reading from the questions and answers that were given yesterday by Mr. Cobban and furnished to me by the official stenographer.

Q. Now, did you know Mr. Moss?

A. I did; I know him very well.

Q. Where did he live?

A. He lived one of my nearest neighbors, in the Rattlesnake valley.

Q. How long have you known him, Mr. Cobban?

A. Well, I think I have known him for something like 18 or 19 years.

Q. He is a crippled man, is he not?

A. He is.

Q. And a peddler by occupation?

A. Well, he does peddling; he has an orchard and garden and he has a good many chickens, and did, at one time, have a good many cows and ran a dairy, and he sold his own products, as a rule, the products from the little farm.

Q. Did you go with him up to the location?

A. I did.

Q. Who went with you?

A. Mr. Charles Dorman.

Q. Who was Mr. Charles Dorman?

A. Charles Dorman was a single man, I think, there

(Testimony of R. M. Cobban.)

in Missoula, and a brother of his was in the employ of the Missoula Mercantile Company, in their store; I don't remember what his occupation was; I don't remember what Charlie Dorman was doing at that time.

Q. You mean Harry Dorman instead of Charlie Dorman, don't you?

A. Yes, that is right, H. C. Dorman is the name; I am not certain what his first name was, but I remember the initials, H. C.

Q. So it was Harry that made the entry?

A. Yes, sir, I believe so.

Q. And that went with you? A. Yes, sir.

Q. Did anybody else go? A. No, sir.

Q. Who did you go to see?

A. I went there to meet Mr. Griswold at that time.

Q. Up at Clearwater?

A. Yes, sir.

Q. And they went with you? A. Yes, sir.

Q. And you went with the purpose of putting them on locations, did you not? A. I did, sir.

Q. Did you make a joint arrangement with them previous to leaving Missoula?

A. No, sir, not a joint arrangement.

Q. It was separate? A. Yes, sir.

Q. I just asked that to see if I could bunch the questions, that is all. Tell me what talk you had with Mr. Moss in regard to the matter?

Mr. BICKFORD.—I think we will enter the objection

(Testimony of R. M. Cobban.)

that it is irrelevant, immaterial, and not proper cross-examination as to what conversation he had with Mr. Moss.

A. Mr. Moss' father spoke to me first about wondering whether he could find a timber and stone claim; he wanted one for himself, and then he said that he thought that Charlie wanted one also, and afterwards I met Charlie and he asked me about a claim, and I told him I could find him a claim, and would do so if he wished it for $100, for the claim.

Q. For the service?

A. Yes, sir, and he was very anxious to take up a claim, and it was following that up that he went up to the Clearwater with me.

Q. Very well. Now, then, tell me about what negotiations you had with Mr. Dorman?

A. Practically the same thing; he had asked for a claim and I told him I could find him one if he wanted to pay $100 for the location of it, and I would give him what assistance I could, and he agreed to it.

Q. Where is Mr. Dorman now?

A. I have no idea; I have not heard of him for several years.

Q. What was he doing at the time?

A. He had been in the employ of the Missoula Mercantile Company some of the time, and I am not certain just what he was doing at this particular time.

Q. How old a man was he?

A. I should judge about from 25 to 28, somewhere in there.

(Testimony of R. M. Cobban.)

Q. A single man?

A. I think so; I am not positive.

Q. Did he have any real estate in his own name at the time? A. I don't know.

Mr. BICKFORD.—We object to that as being irrelevant and immaterial, and not proper cross-examination.

The WITNESS.—I don't know that he had, but his family was a good family, and I knew of them, and knew their standing there in the community, and that he was a man that was considered thoroughly reliable.

Q. That you could trust him? A. Yes, sir.

Q. And the same is true of Mr. Moss, is it not?

A. Well, Mr. Moss had a good deal of property; Mr. Moss was probably worth at that time from $3,500 to $5,000.

Q. In his own name? A. Yes, in his own name.

Mr. WALSH.—That is the crippled peddler that you spoke about?

Mr. MAYNARD.—That is the one.

Q. Do you know what it consisted of?

A. It consisted of the home that they are living on; that his father and mother live in.

Q. Was that home in his name?

A. Yes, and several blocks of ground that they have. They have at least three different blocks of ground, and I think the whole of it is in Charlie's name. The home, I know, is in his name, and he also had some mining stock at that time.

(Testimony of R. M. Cobban.)

Q. Did you know of any encumbrances upon the Moss property? A. There were no encumbrances.

Q. So, in consideration of the promise of Dorman and Moss that they would pay you $100 for your services, just what you would do?

A. I saw Mr. Griswold two or three days prior and told him that there were two parties there that wanted to make arrangements for timber claims, as I stated, and I wanted him to meet us at Clearwater on such a day, and show us the claims, that he had said that he had found good timber land. We went to Clearwater, and when we got there we found that Mr. Griswold was not on hand; he was not there. I then went with them myself and we found two claims ourselves that suited, found one that suited Mr. Dorman, and one that suited Mr. Moss.

Q. How did you know about those claims?

A. I had the maps of the whole river, and I kept posted on the timber, what land was vacant; I knew what was vacant, and what had been taken up, and I knew the section that Mr. Griswold had spoken to me of, as there being some timber in that section that he thought was pretty fair.

Q. So, knowing the section that Mr. Griswold had specified to you, you went to that section when you found that Griswold was not there, and was thereby able to locate the timber land?

A. Well, we went to that particular section, and then I ran it out and subdivided it, and we finally found four

(Testimony of R. M. Cobban.)

forties in that section that were all right, that they considered all right, and I thought it was good timber, and a claim in another section that had not been spoken of by Mr. Griswold.

Q. How far was that away?

A. Oh, it was a mile or two.

Q. And you did not see Mr. Griswold on that trip at all, then? A. No, sir.

Q. And after having located these claims did you go back to Missoula with them?

A. I am not certain whether I did or not; I think likely I did.

Q. Without seeing Mr. Griswold at all on that trip?

A. Yes, sir.

Q. Or Mr. Jemison?

A. Without seeing Mr. Griswold or Mr. Jemison?

Q. And it was your own individual work?

A. Yes, sir.

Q. And the only assistance you received from Griswold was the fact that he had named the section upon which one of the locations was made?

A. He had simply named a section that he thought there was some good timber in that section.

Q. Can you remember of meeting any of the men that were in your employ on this trip when you located these two men?

A. No, sir; I don't remember seeing them; it is possible I might have seen Mr. Griswold on my return, but I have

(Testimony of R. M. Cobban.)

no recollection of it. I am of the impression that I did not see him at all on the trip.

Q. And that that was the first thing that you did in the arrangement to earn $100 from each of them, was that you found the location? A. Yes, sir.

Q. And then you assisted them in naming the witnesses, did you not?

A. Well, I am not certain as to that. They may have asked me who it would be well to name, and I may have assisted them; I gave them every assistance that I could.

Q. And the witnesses that were in fact named in the Moss claim were C. L. Griswold, David Morris, Harry C. Dorman and yourself, were they not?

A. I am not certain as to that.

Q. I show you page 2464 of the record in Volume V?

A. I presume that is correct.

Q. "Q. And who were the witnesses in this entry? A. The witnesses were C. L. Griswold, David Morris, Harry C. Dorman and R. M. Cobban. Q. What witnesses did he have at the time of making the final proof? A. Harry C. Dorman and C. L. Griswold."

A. That is probably correct.

Q. The witnesses, then, were yourself and Griswold and Morris, who were in your employ, and Mr. Dorman, who accompanied you, and Mr. Moss. Who was the man that attended to the publication of the notices in pursuance of this arrangement between you? Did you attend to it or did Mr. Catlin?

A. The land office attended to it.

(Testimony of R. M. Cobban.)

Q. I mean in regard to seeing that the descriptions of the land were correctly stated in the printed publication, and corrected the names of the witnesses, and so on?

A. Well, any of them that I had anything to do with under the agreement that I have stated that I would do all I could to help them for $100, in those cases I paid particular attention to it myself, and probably asked Mr. Catlin to look out for anything that could be done in those matters.

Q. To go to the newspaper office at the time of the expiration of the publication and pay for the same and get an affidavit of publication?

A. In some instances.

Q. Was it true in these two cases?

A. I am not certain just how those were paid for.

Q. You have some data, have you not, in reference to that, the receipts from the publisher of the newspaper or something?

A. No, sir, those were turned over— There was just simply an affidavit of publication turned into the land office, and the receipt of that by the land office is proof of its being paid.

Q. But weren't you in the habit of receiving from the publisher a receipt for the money paid yourself in cases where you did pay it?

A. Not as a rule; sometimes I might have done so.

Q. And as to whether or not you did it in this case, you are unable to say?

A. I am unable to say at the present time.

(Testimony of R. M. Cobban.)

Q. Now, it appears, Mr. Cobban, from the record on page 2465 that the final receipt was issued on the same day as the final proofs, namely, the 29th of September, 1899.

Mr. WALSH.—I believe that is the usual occurrence.

Q. Now, what arrangement, Mr. Cobban, had you made with Mr. Moss about advancing money to pay for this land?

A. Mr. Moss, while he had considerable property, had not the money on hand to use at that time, and I offered to loan him the money, the same as I had in some of these previous cases that I have testified to this morning.

Q. And that offer was accepted? A. It was.

Q. How much did you loan him?

A. I loaned him whatever amount he required.

Q. Have you any check representing that loan?

A. I think that I have; I think I loaned him on one occasion $500.

Q. Did you give that to him? A. Yes, sir.

Q. Will you please give me the check?

A. I will try to find it. On September 27th I gave Charles Moss a check for $25. I have here three checks; the first one is for $25, payable to Charles Moss, dated September 27th, 1899.

Q. Just let me see it.

Mr. WALSH.—Go on, Mr. Cobban, and detail them, please?

A. (Continued.) The second check is given Septem-

(Testimony of R. M. Cobban.)

ber 28th, to Charles Moss for $500, and the third check is dated October 13th, 1899, to Charles H. Moss, for $100.

Mr. MAYNARD.—I desire to read these into the record.

Q. Will you please give me the stubs?

A. I cannot find the stubs of all of them.

Q. Can you find any of them?

A. Yes, here is the $25 check, the first one that I find.

Mr. BICKFORD.—I think the rule is that where the check itself is produced that the stub is not admissible in evidence and is of no value to the record.

Mr. MAYNARD.—The first check is as follows: "The First National Bank of Missoula, Montana. Pay to the order of Charles Moss $25. Missoula, Montana, September 27th, 1899. R. M. Cobban." Endorsed: "Charles Moss." The accompanying stub is: "Pay to Charles Moss $25, September 27th, 1899, for account."

Mr. WALSH.—What is it on these checks that you want; you have got the facts that on a certain day a check for $25 was issued to Charles Moss.

Mr. MAYNARD.—I desire to read them into the record.

Mr. WALSH.—For what purpose do you want to spread out the record; don't you care to answer the question?

Mr. MAYNARD.—Because I think it is material to the issue.

Mr. WALSH.—That is not answering the question, that

(Testimony of R. M. Cobban.)

is evading it. What materiality has it? What do you want to spread the record out for—what do you want to take the time to read it for?

Mr. MAYNARD.—I cannot answer it in any other way, except that I think the checks themselves appearing in the case just as they are, is the best evidence of the fact.

Mr. WALSH.—You have got the date and the amount, and who drew it and the person to whom it is made payable; it is all in the record now. What more do you want?

Mr. MAYNARD.—I don't know as it is material, Brother Walsh, but I am only responsible to myself and the Government for my side of the case.

The second check is: "The First National Bank of Missoula, Montana. Pay to the order of Charles Moss $500, dated September 28th, 1899, R. M. Cobban." Endorsed: "Charles Moss." The third check is: "Butte, Montana, October 13th, 1899. The First National Bank of Butte. Pay to Charles H. Moss or order one hundred dollars, $100. R. M. Cobban." Endorsed: "Charles H. Moss."

Mr. BICKFORD.—I want it noted in the record that each of the checks presented by counsel are stamped by the bank paid.

Mr. MAYNARD.—Yes, sir, and it can be so stipulated that it appears in all of these checks, except where otherwise noted.

Q. Now, this $25, the first payment was paid to Mr. Moss for what purpose?

A. I cannot tell you now.

(Testimony of R. M. Cobban.)

Q. Let me refresh your recollection, Mr. Cobban. Didn't you give him the $25 to pay his expenses to go to Helena?

A. I don't know that that $25 has any business in here at all; I don't know that it has anything to do with this timber claim at all; I don't know that it has, because on the 28th, I think it was, a check was given him for $500 for the payment for the land and expenses connected with the land and the expenses of Mr. Dorman.

Q. That was the $500? A. Yes, sir.

Q. And that was to be used to pay the expenses of both Dorman and Moss?

A. Yes, sir. Instead of giving two checks to Mr. Dorman, I made a loan the same as Mr. Moss, and instead of giving two checks at that time, why it was made just in one.

Q. What would the $500 pay for?

A. I did not know just what expenses there would be attached to it, and it would pay for all of it.

Q. That would be for one?

A. Yes, sir, for Mr. Moss' land and the expenses.

Q. But you would also have to give some money also, wouldn't you, to pay for Mr. Dorman's land?

A. Yes, sir, which I did.

Q. So it would not be embraced in this check, then?

A. Well, the check to Mr. Dorman, which I see, I think, was just the amount that he had to pay into the land office.

Q. Well, have you any recollection of having paid

(Testimony of R. M. Cobban.)

Mr. Moss $25 previously in Helena to pay for his expenses? A. I have not.

Q. What is you best recollection on the subject; do you think you did or did not.

Mr. BICKFORD.—If the witness has no recollection at all, of course, he cannot state his best recollection, a man being able to state his best recollection only when he has some recollection, and the witness has already testified that he has no recollection about it, and therefore the question is irrelevant and immaterial and not proper cross-examination.

Mr. MAYNARD.—I think that is true; I think that is right.

Q. Now, you are not prepared to say but what you did give Mr. Moss $25 just to cover his expenses to go over to Helena, are you?

A. No, sir, I don't think that I gave that for expenses for that trip; he may have paid out the expenses for the first time from some money that he had in his possession, and under the agreement for the loan I gave him that for some expenses that he had already incurred, or it may have ben entirely a different matter; it may have been entirely a different matter; it may have been some transaction that we had as neighbors back and forth; we have little dealings, and it might have been on an open account.

Q. Very well, but as a matter of fact, you say that this check of $25 of date the 27th, which you gave Moss

(Testimony of R. M. Cobban.)

the day before you gave him a check for $500, might have been to cover the expenses which he had previously incurred in going to Helena at the time that he filed on the land?

A. Yes, sir.

Mr. WALSH.—Yes, he says that there is no doubt about that.

Q. That is the truth, is it not?

A. Why, it might have been given for that purpose, yes, sir; any money that he required in connection with this trip I had agreed to loan him, whatever he said that he required.

Q. Certainly. So that, in order to clear that up so there will be no question but that it was for that purpose and not for neighborly dealings as you testify, I call your attention to Mr. Moss' testimony on the subject. I read from the record, page 1033 of Volume II: "Q. Within two or three days or a few days thereafter you came over to Helena and made your entry? A. Yes, sir. Q. Who gave you the money to come here? A. Mr. Cobban. Q. Mr. Cobban gave you the money? A. Yes, sir. Q. How much did he give you? A. I don't remember how much. Q. Well, about how much? A. Why, I think it is $25, if I ain't mistaken. Q. $25? A. Yes, sir. Q. Do you remember what you did with the $25? A. Well, I paid my expenses and paid for the land. Q. Did you use $10 for it for the entry fee? A. Yes, sir. Q. And then you went back home, did

(Testimony of R. M. Cobban.)

you? A. Yes, sir. Q. That was $10, and the rest of it was for your expenses? A. Yes, sir." Now, what have you to say after having heard Mr. Moss' testimony, as to the question whether you did or not?

A. My answer is just exactly the same as I made before; I have no knowledge on that. You have Mr. Moss' evidence.

Whereupon a recess was taken until 2 P. M.

Thursday, May 8th, 1902, two o'clock P. M.

Hearing resumed pursuant to adjournment.

R. M. COBBAN recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Cobban, I call your attention now to this check of five hundred dollars which you gave Charles H. Moss, on the 28th of September; do you remember where you were when you gave this to him?

A. No, I do not; I don't know whether it was in Missoula or in Helena, but I think it was in Missoula.

Q. Isn't it a fact that you got the money, that you paid the money yourself to Mr. Moss at the station in Helena?

A. I couldn't tell you; if you will let me see that check for five hundred dollars, I may be able to tell you.

Q. Here it is.

(Counsel hands witness check referred to.)

A. No, sir, I don't think it was so, but still it is possible I did, but I don't think I did.

(Testimony of R. M. Cobban.)

Q. What is that? A. I don't think I did.

Q. And don't you—isn't it a fact that Mr. Griswold was here—was in Helena at the time?

A. He might have been in Helena.

Q. And did he take charge of the matter in aiding Mr. Moss to make his final payment?

A. No, sir, he did not.

Q. He did not?

A. To the best of my knowledge and belief he did not. He had no instructions from me to that effect.

Q. I mean in making final proof.

A. Final proof I mean. No, sir.

Q. Well, do you remember where you were at this time?

By Mr. BICKFORD.—What time do you refer to?

By Mr. MAYNARD.—At the time of the final proofs, I mean.

A. I am not certain whether I was in Helena on that day or not, no, sir.

Q. Now, let me ask you, weren't you in Helena at the time, and wasn't Mr. Griswold there, and didn't you pay Mr. Moss the check for five hundred dollars right there at the station in Helena, and you go on East at the time?

A. I don't think that I gave him—I don't think that I gave Mr. Moss any money at that time; I think I gave him the check on that day; I might have come to Helena

(Testimony of R. M. Cobban.)

at the same time, but I have no clear recollection of where I was.

Q. Well, the arrangement was that Moss and Dorman—that you were to pay them, as you have testified, that you were to assist them in every way in consideration of the hundred dollars? A. Yes, sir.

Q. And there was nothing said at all about Mr. Moss deeding this land and receiving the hundred dollars?

A. No, sir.

Q. You have no recollection of any of the transactions that took place at the time of the proving up in Helena?

A. I have no recollection of any details.

Q. And you are quite certain that Mr. Griswold had nothing to do with the matter?

A. Mr. Griswold might have been a witness there; I rather think he was, but outside of that, Mr. Griswold had no instructions from me, and was not authorized to act for me in any way or to my knowledge for the other people.

Q. Well, do you remember where you were when Mr. Moss conveyed the land to you?

A. I think I was in Missoula. If you will kindly let me see the deed it may refresh my memory.

Q. Yes, sir. (Counsel hands witness deed referred to.)

A. It was in Butte that he transferred this to me.

Q. What did you say?

(Testimony of R. M. Cobban.)

A. It was in Butte that he transferred this land to me.

Q. Now, having refreshed your memory by looking at the deed, do you recall any of the facts and circumstances connected with the deed, the deeding of the land by Moss to yourself?

A. Well, I don't remember only from seeing the deed itself, where the deed was made; I remember the circumstances of purchasing the land from Mr. Moss.

Q. Well, what were those circumstances?

A. I simply met Mr. Moss and we figured up to see what his indebtedness was to me, and I made him an offer for the purchase of the land instead of mortgaging it to me, and he concluded to accept that offer, and on accepting it, I went to work and drew the deed for it.

Q. Yes, and that was in Butte?

A. Yes, sir, the acknowledgment was taken here.

Q. Have you any recollection of any fact or circumstances connected with Mr. Moss deeding in Butte, or how he happened to be here, outside of the fact that it appears to have been executed in Butte?

A. Yes, sir.

Q. What were they?

A. I remember distinctly that Mr. Moss told me that he was going to Butte to make a visit to some of his relatives, and friends, that he had not been here for a number of years, and that he was going over from Helena to Butte, to remain here for some little time; and I

(Testimony of R. M. Cobban.)

think he did; I think he stayed here for two or three weeks.

Q. And you recall the fact now, do you not, that in the meantime you went East?

A. No, sir, I am not certain about that, whether I went East or where I was.

Q. But he told you that he was going to Butte?

A. Yes, sir, I am well acquainted with his people here.

Q. Well, did you make arrangements with him to stay in Butte until the deed was executed?

A. I don't think there was anything said about his deeding; there was no transaction of that kind.

Q. Nothing said of that kind?

A. No, sir, there was no agreement in any way, shape or manner, and it had never been mentioned, the idea of his deeding the land to me.

Q. Well, did he seek you out in Butte, or did you look him up?

A. I cannot tell you; I had an office at that time in Butte; I was here very often.

Q. Well, just how, then, did he happen to meet you in Butte and sell this land to you? You don't know that?

A. I don't know just how he happened to meet me. It couldn't have been anything very strange about his meeting me.

Q. Well you don't recall any of the facts or circumstances at the present then?

(Testimony of R. M. Cobban.)

A. Nothing more than the conversation and the culmination of it.

Q. Well, where did the conversation take place?

A. I couldn't tell you where the conversation did take place, but I think in my office on Granite street; I know that the acknowledgment was taken there.

Q. Well, you simply know that from seeing the deed before you? A. Yes, sir.

Q. So that you—he did on that day convey to you, the land, and you paid him how much?

A. I paid him the amount of the—we figured up the amount that he owned me.

Q. That you had paid out for him?

A. Yes, sir, the amount that he owed me that I had loaned to him, and I don't remember just the amount that he received for his lands, but it was somewhere, I should judge about $675.

Q. At that time you figured up what you had paid out for him in the payment for the land and the expenses attending the purchase? A. Yes, sir.

Q. And then you gave him this check dated October 13th, for a hundred dollars, did you not?

A. Yes, sir, I did.

Q. And that is what he made on the transaction?

A. Mr. Moss got more that that.

Q. He got more than that?

A. Yes, sir, the check for five hundred dollars was given to him to—as I stated, to pay for his claim, and to pay for the deed and the expenses. I don't know just

(Testimony of R. M. Cobban.)

what they would be, and I gave him that check and he had some of my own money in his possession when he came to figure up just what had been paid out, so he received more money than is represented by this check, besides the indebtedness that he owed me.

Q. Are you able to say how much that was?

A. I am not.

Q. This five hundred dollars was to pay for his land, and to pay for his second trip to Helena, and Dorman's trip, wasn't it, and the other expenses?

A. I think so.

Q. Well, now, Mr. Cobban, isn't this the truth: That you had made an arrangement with Mr. Moss that he should convey—enter this land for you, and that you were to pay all of the expenses and to pay for the land, and that you did, as a matter of fact, advance him all the money that was necessary. Isn't that true?

A. No, sir, it isn't true; it is an absolute falsehood and I will resent the insinuations that are made in that way. I am here under oath and I propose to tell the truth.

Q. Isn't it true that you met him at the station in Helena and gave him the check for five hundred dollars, and that he and Mr. Griswold attended to the proving up on the claim, Mr. Griswold acting for you, under your hire, and that you went East immediately from Helena, and made arrangements with Mr. Moss that he should go on to Butte and await your returning there, when

(Testimony of R. M. Cobban.)

he would convey the land to you and receive this check for a hundred dollars?

A. There are a good many questions in that one thing.

Q. Now, isn't that all true?

A. No, sir, it isn't; it is absolutely false.

Q. Well, will you tell which is false?

A. Well, if you will segregate your question, it will be much easier.

By Mr. WALSH.—There don't seem to be any question now; all of it has heretofore been answered.

Q. Well, didn't you make arrangements with Mr. Moss that he should go to Butte and await your coming for the deeding of the land?

A. No, sir, I did not.

Q. I read from Mr. Moss' testimony on page 1034, of the record, Volume II. I show you the record, Mr. Cobban, and Mr. Moss' signature on page 1049, "Subscribed and sworn to before me this 14th day of January, A. D. 1902, Henry N. Blake, Examiner in Chancery." I read from page 1034.

"Q. Did Mr. Cobban come with you on the cars?

"A. I don't think so.

"Q. When you came here from Missoula and made final proof did he?

"A. I don't think so, I don't remember about that.

"Q. You don't remember that?

"A. No, I did not see him on the train.

(Testimony of R. M. Cobban.)

"Q. Did you see him after you got here?

"A. Yes, sir, certainly.

"Q. Whereabouts did you meet him?

"A. I met him at the train.

"Q. Down at the train at the depot?

"A. Yes.

"Q. You don't know whether he happened to be there at the station when you came in, or whether he was on the train? A. Well, he was going East.

"Q. Where did you get the money to make your payment on the land?

"A. Mr. Cobban loaned me the money.

"Q. He gave you the money?

"Q. Well, you say that you received the money from Mr. Cobban?

"Q. Well, you got the money from Mr. Cobban?

"A. I borrowed the money.

"Q. Yes, and where did you get it?

"A. I got it of Mr. Cobban.

"Q. At the station there?

"A. Yes.

"Q. When you landed here in town for the purpose of making your final proof, you received this money from Mr. Cobban at the station?

"A. Yes.

"Q. How much did he give you?

"A. He gave me a check for $500.00.

"Q. For $500.00? A. Yes.

(Testimony of R. M. Cobban.)

"Q. Upon what bank?

"A. Well, I don't remember now."

Now, is that testimony true or false?

By Mr. BICKFORD.—We object to that for the reason that it is not proper cross-examination, and we also object to it because it also calls for an answer to a whole lot of testimony, some of which may be true and some of which may be false.

By Mr. WALSH.—Now, we want counsel also to designate what part of the testimony he calls the attention of the witness to.

Q. Whether or not he received the money, the five hundred dollars, from Mr. Cobban, at the station, when Mr. Cobban was on his way East?

By Mr. BICKFORD.—Now, we submit, if your Honor please—and we object to that because if you point out the question now to the witness, and call his attention to the part of the testimony, even that is subject to a division, and part of it may be true and part may be false, and we submit that the witness should have the question divided, so that he may be able to answer it intelligently.

A. I think I have answered that question heretofore. I don't remember whether I was on my way East or not; I don't remember whether I paid that check to Mr. Moss at the depot or not. I have fully stated in the cross-examination heretofore fully as to those facts,

(Testimony of R. M. Cobban.)

and because Mr. Ross says so it is not—I cannot say of my own knowledge that it is so.

By Mr. MAYNARD.—I read from page 1040, of the record in this case, being the testimony of the witness Moss.

"Q. Did he pay any money to you then?

"A. He paid me $100.

"Q. One hundred dollars?

"A. Yes.

"Q. And that is what you got, the sum total of what you got for making this entry, is that not so?

"Q. That is what you got at that time, and was paid by Mr. Cobban $100 for this land?

"A. Well, I could not agree with him then.

"Q. But as to the fact that you received $100?

"A. Why, I went there and I offered him the ground, the lands, and he said he would pay me $100 and the expenses he would bear."

By Mr. WALSH.—Now, we object to that because no specific time is called to the attention of the witness as referred to in the testimony read by counsel from the record.

By Mr. MAYNARD.—If refers to the conveyance of the land in Butte.

Q. Now, then, the question is as to whether or not this testimony, to the effect that you paid him a hundred dollars over and above his expenses, was true or false?

(Testimony of R. M. Cobban.)

By Mr. WALSH.—Wait a moment, Mr. Cobban. We object to the question because it is not proper cross-examination, and the witness has already testified to that.

A. I state as I did before, that I thought that he received more than a hundred dollars, and the cancellation of the indebtedness.

Q. But you are unable to state how much?

A. I am.

Q. And when he gave you the deed, that closed the transaction so far as you and he were concerned?

A. It did.

Q. He gave you no note and no mortgage at any time?

A. No, sir, I don't think he gave me any note; it is barely possible that he might, but I think not.

Q. Are you able to tell from this description, whether there was the full hundred and sixty acres in there or not?

(Counsel hands witness exhibit 151, being the deed from Charles Moss to R. M. Cobban.)

A. Well, I think there were some lots; I think it is a little less than a hundred and sixty acres; that is my recollection about it.

Q. You think it would be less—

A. The description by metes and bounds calls for a hundred and sixty acres.

Q. But, as a matter of fact, you think it was less?

(Testimony of R. M. Cobban.)

A. I think it was less than a hundred and sixty acres, yes, sir.

Q. So that the full purchase price of four hundred dollars would not be required to pay for it?

A. I think not.

Q. And that was returned to you by Mr. Moss at the time?

A. It was reported to me just what his expenses had been, and what money he had paid out.

Q. Now, this Mr. Harry Dorman, I call your attention to him, Mr. Cobban. This $401.00 that you paid Mr. Dorman, does that represent the full amount that you gave him?

By Mr. WALSH.—Just a moment. This Dorman entry is not mentioned in the bill of complaint, is it?

By Mr. MAYNARD.—He has already referred to the fact that he made this arrangement with Mr. Dorman.

By Mr. BICKFORD.—But it isn't referred to in his examination in chief.

By Mr. WALSH.—And we object to it for the reason that in the cross-examination he has answered with reference to the same matters, namely, concerning this entry, and there is no reason why you should go into it again.

By Mr. MAYNARD.—Very well; we will pass that for the present, then.

Q. I next call your attention, Mr. Cobban, to Mr.

(Testimony of R. M. Cobban.)

Leonard Barrott's claim, and I will ask you if you knew Mr. Barrott? A. I did.

Q. How long had you been acquainted with him?

A. I think about two years, probably; no, I had known him about a year.

Q. What was his business, Mr. Cobban?

A. Well, he was a laborer and a violin-maker.

Q. How did you come to open up negotiations with him?

A. Well, we were neighbors. He came to me to see if I couldn't find a location for him, or a timber and stone claim, and I told him that I could find him a claim. I told him on what terms I would find him a claim, if he would allow me a hundred dollars for locating him; I would find him a claim and assist him in every way possible in connection with the claim, and if he needed money, as he said he would, to pay up on the claim, that I would loan him the money for that purpose.

Q. Very well. Just go on and state in your own way what took place then.

A. Well, what do you want to know? If you will ask me questions I will answer them. That is the conversation that took place, practically.

Q. Whereabouts did this conversation take place?

A. In Missoula.

Q. He had no property at the time by which he could buy the land?

(Testimony of R. M. Cobban.)

A. No, sir, he had a little property there; he was considered a reliable, honest, hard-working man. He had a home and two or three lots, I understood.

Q. What is that?

A. He had an interest in the lots and he built a home.

Q. Well, who located him?

A. I think Mr. Catlin—Mr. Griswold, I should say, I think, showed him the land.

Q. Mr. Catlin went up on the ground with him, did he not? A. Yes, sir.

Q. What did you say?

A. That is my understanding that he did, yes, sir.

Q. And he went on to the land that Mr. Griswold had selected?

A. Mr. Griswold, yes, sir; he went on some land that Mr. Griswold had reported.

Q. And the money was paid into the land office, substantially as in the case that you have already mentioned, was it not, by Mr. Catlin? A. Yes, sir.

Q. It appears on page 2426, of the record, that the final certificate was issued on the 14th of September, 1899. When was Mr. Barrott to pay you the hundred dollars?

A. He was to include that in the mortgage with the other expenses.

Q. Oh, you was to keep track of all of the expenses you incurred by reason of his entry, from the beginning to the end, including the payment for the land, the

(Testimony of R. M. Cobban.)

publication of the notice, and the land office fees, and the expenses in going to the land office, and then add a hundred dollars on top of that, and he was to give you a mortgage? A. Yes, sir.

Q. Immediately after he proved up?

A. Yes, sir.

Q. And was that the case—the arrangement, in all of these cases—the hundred dollars was to be paid in that way? A. Yes, sir.

Q. Well, as a matter of fact, did he give you such a mortgage? A. He did not.

Q. Why?

A. Because at the time after he had returned to Missoula, I met him and offered to purchase the land. I told him what I would give him for the land, if he preferred to sell, rather than give the mortgage, and he preferred to sell and did sell.

Q. And have you the check that you gave him?

A. Yes, sir, I think very likely I have, although I am not certain.

Q. Well, I wish you would get it for me.

A. Well, will you give me the date of that deed?

Q. Yes, I can, Mr. Cobban. This was on the 18th of September, 1899.

A. I don't seem to have my October checks, and it doesn't appear to be in the September checks; I cannot find the check.

Q. Very well, we will pass that; please try and find

(Testimony of R. M. Cobban.)

it, Mr. Cobban. Now, how much did you pay Mr. Barrott over and above over what you had paid out for him?

A. I think the full consideration of $650.00 or $675.00, and I think that it amounted to in the neighborhood of a hundred and twenty-five dollars over and above the amount that I had loaned him, and the hundred dollars that he owed me.

Q. Well, you paid up—you charged him with the expense of paying for the land and the other items of expense, and then gave him a hundred dollars for a profit, did you not?

A. Well, in that neighborhood; I don't know how much over and above these items it was that—but somewhere not far from a hundred dollars.

Q. Over and above the amount that he owed you?

A. Yes, over and above what he owed me.

Q. And the amount that he owed you was how much? A. It was somewhere about $575.00.

Q. And what are those elements?

A. It is for the money that had been advanced for him at his request for expenses in going to Helena, in proving up, and I don't know whether he had paid his own expenses or not; he may have paid his own expenses at that time, or I may have included it in the note, but the payment at the land office and the advertisement, and the land office fees, and the hundred dol-

(Testimony of R. M. Cobban.)

lars for locating, and such other expenses that had been incurred on his account.

Q. You took the deed in satisfaction for that and gave him a hundred dollars?

A. Instead of taking the mortgage after he returned to Missoula, and was ready to execute the mortgage to me. I then made him an offer, that if he preferred to sell, that I would give him so much for the claim, and my offer was accepted, and it was closed in that way.

Q. And so you would charge him a hundred dollars whether he sold you the land or he retained the land and gave you a mortgage?

A. Yes, if he retained the land he was to give me a mortgage, which included a hundred dollars for locating him, and the services that I had rendered him up to that time, and then the matter would go into a mortgage.

Q. And if he choose to deed to you, as he did, then you charged him a hundred dollars just the same?

A. Well, it was figured that he certainly owed me a hundred dollars. We figured the amount of the claim, and I would allow him for it. He was under no obligation, and none of the other entrymen, to convey to me in any way, shape or manner. They could have sold to any person and paid me the money and deducted the amount that they had agreed to pay to me for locating them in each instance.